IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PEGGY J. NEECE and BUEL H. NEECE,

Plaintiffs,

vs.

INTERNAL REVENUE SERVICE OF THE UNITED STATES OF AMERICA and FIRST NATIONAL BANK OF TURLEY, N.A.,

Defendants.

No. 88-C-1320-E

FILED

JUN 15 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

This matter comes before the Court on the motion of Plaintiffs for partial summary judgment and the motions of Defendants, Internal Revenue Service (IRS) and First National Bank of Turley (FNBT), for summary judgment.

Plaintiffs filed this action September 28, 1988 seeking damages against Defendants for alleged violations of the Right to Financial Privacy Act, 12 U.S.C. §3401, et seq. (RFPA). The material facts are not disputed. In April 1988 Mikel Hoffman, President of FNBT, contacted Gary Benuzzi, a special agent with the criminal investigations division of the IRS in Tulsa, about Hoffman's suspicions that Buel Neece was attempting to encumber personal assets to thwart IRS collection of taxes. Several days following their telephone conversation Benuzzi met with Hoffman at the bank. Benuzzi was given copies of documents, namely, an unsigned and incomplete loan application from Buel Neece, and an

unsigned financial statement for Peggy and Buel Neece.

The Neece's claim that this informal disclosure of documents, without their consent and without a subpoena, violates the RFPA. They seek actual and punitive damages.

The dispositive issue in all three pending motions is whether this informal disclosure of bank records to an IRS agent is proscribed by the Right to Financial Privacy Act. This precise issue has been recently addressed by the United States District Court for the Southern District of Indiana in Raikos v. Bloomfield State Bank, 703 F.Supp. 1365 (1989). After examining the pertinent statutory provisions, the legislative history of the RFPA, and commentators, the Court concluded that the Act does not proscribe informal access to bank records by IRS agents. 703 F.Supp. at 1369-1372. This Court concurs in the analysis of Judge McKinney in Raikos on the question whether this type of informal activity is authorized by the Code. Accordingly, this Court holds that the Act is inapplicable to Plaintiffs' claim. Therefore, Defendants' motions for summary judgment are granted. Reference is made to the Raikos opinion at pages 1369-1372.

IT IS THEREFORE ORDERED that Plaintiffs' motion for partial summary judgment is denied; and

IT IS FURTHER ORDERED that Defendants' motions for summary judgment are granted.

ORDERED this 14TH day of June, 1989.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RONNY G. ALTMAN, an individual, and PAUL J. WOODUL, an individual, Plaintiffs, vs. PENNZOIL EXPLORATION AND PRODUCTION COMPANY, a Delaware corporation, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, Defendants.	)	Case No. 88-C-1559-C

FILED

JUN 1989

Clerk C. Silver, Clerk

ORDER FOR DISMISSAL WITH PREJUDICE

Upon stipulation and motion of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Stipulation and Motion for Dismissal With Prejudice filed by Plaintiffs, Ronny G. Altman and Paul J. Woodul, and Defendant, Pennzoil Exploration and Production Company, be granted and that this action, including all claims, counterclaims and demands which have been asserted or could have been asserted in this cause by Plaintiffs, Ronny G. Altman and Paul J. Woodul, against Pennzoil Exploration and Production Company are dismissed with prejudice to any further action.

DATED this 15th day of June, 1989.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

Attorney for Plaintiffs

Attorney for Defendant
Pennzoil Exploration and
Production Company

Closed Pennzoil Corp.

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FILED
IN OPEN COURT

IN THE UNITED STATES DISTRICT COURT JUN 15 1989

FOR THE NORTHERN DISTRICT OF OKLAHOMA Jack C. Silver, Clerk
U.S. DISTRICT COURT

JANE SERWANGA,

Plaintiff,

-vs-

THE CITY OF TULSA,

Defendant.

No. 88-C-431-E

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law entered this date, Judgment is entered in favor of the defendant, City of Tulsa, and against the plaintiff, Jane B. Serwanga. Each party shall pay their respective costs and attorney's fee.

DATED this 14th day of June, 1989.

James O. Ellison

JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RONNY G. ALTMAN, an individual, and PAUL J. WOODUL, an individual, Plaintiffs, vs. PENNZOIL EXPLORATION AND PRODUCTION COMPANY, a Delaware corporation, and UNITED GAS PIPE LINE COMPANY, a Delaware corporation, Defendants.	)	Case No. 88-C-1559-C

FILED
JUN 15 1989

ORDER FOR DISMISSAL WITH PREJUDICE

Upon stipulation and motion of the parties,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Stipulation and Motion for Dismissal With Prejudice filed by Plaintiffs, Ronny G. Altman and Paul J. Woodul, and Defendant, Pennzoil Exploration and Production Company, be granted and that this action, including all claims, counterclaims and demands which have been asserted or could have been asserted in this cause by Plaintiffs, Ronny G. Altman and Paul J. Woodul, against Pennzoil Exploration and Production Company are dismissed with prejudice to any further action.

DATED this 15th day of June, 1989.

H. DALE COOK
UNITED STATES DISTRICT JUDGE

APPROVED:

Attorney for Plaintiffs

Attorney for Defendant
Pennzoil Exploration and
Production Company

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
IN OPEN COURT

JUN 15 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
TERRENCE E. MONTGOMERY; PAT MONTGOMERY; COUNTY TREASURER, Craig County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Craig County, Oklahoma,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 88-C-564-E

O R D E R

Upon the Motion of the United States of America, acting through the Farmers Home Administration, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, to which no objections have been filed, it is hereby ORDERED that this action shall be dismissed with prejudice.

Dated this 14 day of June, 1989.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
NELLIE GAY ACOTT,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 89-C-177-E

DEFAULT JUDGMENT

This matter comes on for consideration this 12 day of June, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Nellie Gay Acott, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Nellie Gay Acott, acknowledged receipt of Summons and Complaint on March 23, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Nellie Gay Acott, for the principal amount of $601.92, plus accrued interest of $173.64 as of January 17, 1989, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.82 percent per annum until paid, plus costs of this action.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

RANDY JOE WARD, Plaintiff, vs. JON E. LYON, RICKY DON STAFFORD, TROY D. WATSON, and ALAN M. WEISS, d/b/a AMERICAN MARKETING, INC., Defendants.	)	Case No. 89-C-163 E

DISMISSAL WITHOUT PREJUDICE

COMES NOW RANDY JOE WARD, by and through his attorney of record, Chris Economou, and dismisses his now - pending causes of action in the above styled case without prejudice.

LAW OFFICES OF CHRIS ECONOMOU

By: 

Chris Economou
1227 S. Frisco
Tulsa, Oklahoma 74119
(918) 587-2278
FAX (918) 587-2833
ATTORNEY FOR PLAINTIFF

CERTIFICATE FOR MAILING

I hereby certify that a true and correct copy of the above and foregoing Entry of Appearance was duly served by depositing the same in the United States mail, postage prepaid, at Tulsa, Oklahoma certified mail return receipt requested, the _____ day of _____, 1989, addressed to _____ (NONE) _____.

Chris Economou

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FIRST OKLAHOMA SAVINGS BANK, F.A., a federally chartered savings bank, formerly known as First Oklahoma Savings and Loan Association,	)	
Plaintiff,	)	
v.	)	Case No. 88-C-1331-E
GEORGE A. SHIPMAN; CLARA J. SHIPMAN; STRATFORD HOUSE INNS, LTD., an Oklahoma corporation, now known as DIVERSIFIED RESOURCES CORPORATION, an Oklahoma corporation; TWIN CITY SAVINGS BANK, FSB; THE INTERNAL REVENUE SERVICE; LAKESHORE BANK, N.A.; TEXAS INNS MOTEL; WESTERN NATIONAL BANK; and JOHN F. CANTRELL, TULSA COUNTY TREASURER,	)	
Defendants.	)	

ORDER

Defendant Federal Savings and Loan Insurance Corporation, in its capacity as Receiver for Twin City Savings, filed a motion seeking the dismissal of the amended cross-claims filed against Twin City Savings, by defendants Diversified Resources Corporation ("Diversified"), George A. Shipman and Clara J. Shipman (collectively the "Shipmans"). Defendants Diversified and the Shipmans have failed to respond. Accordingly, the motion is deemed confessed, Local Rule 14(A), and the amended cross-claims filed by defendants Diversified Resources Corporation, George A. Shipman and Clara J. Shipman are dismissed with prejudice.

IT IS SO ORDERED this 13th day of May, 1989.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ELMER EUDELL WILLIAMS,)
)
Plaintiffs)
)
v.) 88-C-1197-C
)
RON CHAMPION, et al,)
)
Defendants.)

FILED

JUN 14 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed May 24, 1989 in which the Magistrate recommended that Defendants' Motion to Dismiss be granted as to all counts and Plaintiff's Complaint be dismissed.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is affirmed.

It is, therefore, Ordered that Defendants' Motion to Dismiss is granted as to all counts and Plaintiff's Complaint is dismissed.

Dated this 14th day of June, 1989.

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

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OBA # 5026

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BUDDY SMITH, Plaintiff, vs. ALLSTATE INSURANCE COMPANY, Defendant and Third Party Plaintiff, vs. D. M. SOKOLOSKY, Personal Representative of the Estate of Russell M. Berst, Deceased, Third Party Defendant.	)	Case No. 88-C-673-C

ORDER OF DISMISSAL WITH PREJUDICE

The Joint Stipulation of Dismissal With Prejudice being filed by the parties showing all issues settled, the case is therefore ordered dismissed with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure.

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APPROVED AS TO FORM:

DENNIS KING
Attorney for Plaintiff

MICHAEL P. ATKINSON
Attorney for Defendant and
Third Party Plaintiff

JOSEPH H. PAULK
Attorney for Third Party Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RICKIE B. BREWER,

Plaintiff,

vs.

OTIS R. BOWEN, M.D., Secretary of Health and Human Services,

Defendant.

No. 88-C-828-E

O R D E R

NOW on this 14th day of June, 1989 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Defendant, Secretary of Health and Human Services, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, has moved through Nancy Nesbitt Blevins, Assistant United States Attorney, for this case to be remanded to the Secretary for the purpose of evaluating the credibility of Plaintiff's subjective complaint of pain pursuant to Luna v. Secretary of Health and Human Services, 834 F.2d 161 (10th Cir. 1987).

This Court regrets the inevitable delay in ultimate determination that will result from such remand. However, under this Circuit's holding in Huston v. Bower, 838 F.2d 1125 (10th Cir. 1988) this Court must remand to the Secretary to avoid the appearance of usurping the function of the Administrative Law Judge by reweighing the evidence and making its own determination of witness credibility. This Court must therefore decline to accept

the Report and Recommendation of the Magistrate.

IT IS THEREFORE ORDERED that this case be remanded to the Secretary for the purpose of evaluating the credibility of Plaintiff's subjective complaint of pain pursuant to Luna v. Secretary of Health and Human Services, 834 F.2d 161 (10th Cir. 1987).

ORDERED this 14TH day of June, 1989.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. ARNOLD CARL VARNER; CARRIE MAE VARNER; ANITA VARNER; GILCREASE HILLS HOMEOWNERS ASSOCIATION; COUNTY TREASURER, Osage County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, Defendants.	)	CIVIL ACTION NO. 88-C-1577-C

FILED

JUN 7 1989

Clerk, U.S. District Court

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 8th day of June, 1989. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage County, Oklahoma; and the Defendants, Arnold Carl Varner, Carrie Mae Varner, Anita Varner, and Gilcrease Hills Homeowners Association, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Gilcrease Hills Homeowners Association, was served Summons and Complaint on January 31, 1989; that Defendant, County Treasurer, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on December 6, 1988; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on November 29, 1988.

The Court further finds that Defendants, Arnold Carl Varner, Carrie Mae Varner, and Anita Varner, were served by publishing notice of this action in the Pawhuska Journal-Capital, a newspaper of general circulation in Osage County, Oklahoma, once a week for six (6) consecutive weeks beginning March 18, 1989, and continuing to April 22, 1989, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Arnold Carl Varner, Carrie Mae Varner, and Anita Varner, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Arnold Carl Varner, Carrie Mae Varner, and Anita Varner. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in

ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to the subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma, filed their Answer on December 7, 1988; and that the Defendants, Arnold Carl Varner, Carrie Mae Varner, Anita Varner, and Gilcrease Hills Homeowners Association, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Three (3), Block Two (2), GILCREASE HILLS, VILLAGE I, Blocks 1, 2 and 3, a subdivision in Osage County, Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 20, 1981, the Defendants, Arnold Carl Varner and Carrie Mae Varner, executed and delivered to Midland Mortgage Co. their mortgage note in the amount of $64,900.00, payable in monthly installments, with interest thereon at the rate of 14 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Arnold Carl Varner and Carrie Mae Varner, executed and delivered to Midland Mortgage Co. a mortgage dated March 20, 1981, covering the above-described property. Said mortgage was recorded on March 24, 1981, in Book 595, Page 910, in the records of Osage County, Oklahoma.

The Court further finds that on October 10, 1983, Midland Mortgage Co. assigned unto the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, the above-described mortgage. The Assignment was recorded on November 4, 1983, in Book 0644, Page 795, in the records of Osage County, Oklahoma.

The Court further finds that Defendants, Arnold Carl Varner and Carrie Mae Varner, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Arnold Carl Varner and Carrie Mae Varner, are indebted to the Plaintiff in the principal sum of $66,563.22, plus interest at the rate of 14 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of

$643.83, plus penalties and interest, for the year 1988. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Anita Varner and Gilcrease Hills Homeowners Association, are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Arnold Carl Varner and Carrie Mae Varner, in the principal sum of $66,563.22, plus interest at the rate of 14 percent per annum from March 1, 1988 until judgment, plus interest thereafter at the current legal rate of 8.82 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of $643.83, plus penalties and interest, for ad valorem taxes for the year 1988, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Anita Varner and Gilcrease Hills Homeowners Association, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:
In payment of Defendants, County Treasurer and Board of County Commissioners, Osage County, Oklahoma, in the amount of $643.83, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:
In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney

JOHN S. BOGGS, JR.
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 88-C-1577-C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALAN D. KNOX, an Illinois resident, NORMAN W. KNOX, a Texas resident, MARTIN A. KNOX, an Iowa resident, GEORGE NOLAN KNOX, III, a Florida resident, RUTH MCCOLLUM, an Alabama resident, and SHIRLEY KNOX PEDERSON, an Iowa resident,	)	
Plaintiffs,	)	
vs.	)	Case No. 88-C-740-E
GENE W. KNOX, an Oklahoma resident, KATHLEEN SUE KNOX, an Oklahoma resident, and SONDRA KAY STACY, a Colorado resident,	)	
Defendants.	)	

J U D G M E N T

Judgment is hereby entered dismissing with prejudice both this case and the Complaint herein, all pursuant to Federal Rule of Civil Procedure 12(b)(6) and this Court's Order of March 20, 1989.

IT IS SO ORDERED this 12 day of June, 1989.

James O. Ellison
United States District Judge

APPROVED AS TO FORM:

J. STEPHEN WELCH
7130 South Lewis, Suite 720
Tulsa, Oklahoma 74136

and

RUSSELL W. WALLACE
6655 S. Lewis Avenue, Suite 310
Tulsa, Oklahoma 74136

By _____
J. Stephen Welch

Attorneys for Plaintiffs
ALAN D. KNOX, NORMAN W. KNOX, MARTIN A. KNOX, GEORGE NOLAN KNOX, III, RUTH McCOLLUM and SHIRLEY KNOX PEDERSON

DOUGLAS L. INHOFE
GEORGE H. LOWREY

By _____
George H. Lowrey, OBA #10888

CONNER & WINTERS
2400 First National Tower
Tulsa, Oklahoma 74103

Attorneys for Defendants
GENE W. KNOX, KATHLEEN SUE KNOX and SONDRA KAY STACY

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ADESCO, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	87-C-827-C
	)	
HERITAGE LIFE INSURANCE COMPANY, et al,	)	
	)	
Defendants.	)	

JUDGMENT

This matter came before the Court for consideration of defendant's motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant Heritage Life Insurance Company, and against plaintiff as to Count 1 of the Complaint.

IT IS SO ORDERED this 5th day of June, 1989.

H. DALE COOK, Chief Judge
UNITED STATES DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

KAISER ALUMINUM & CHEMICAL CORPORATION, a Delaware corporation,	)	
Plaintiff,	)	
v.	)	Case No. 86-C-522-C
STAMICARBON, B.V., a corporation of The Netherlands; and BRONSWERK, P.C.E.S., a corporation of The Netherlands,	)	
Defendants.	)	

ORDER

COMES NOW before this Court the Joint Motion To Dismiss of the Plaintiff, Kaiser Aluminum & Chemical Corporation, and Defendant, Stamicarbon, B.V., to dismiss with prejudice the lawsuit filed by Kaiser Aluminum & Chemical Corporation against Stamicarbon, B.V. This Court having reviewed the pleadings, the Joint Motion To Dismiss and the Release and Indemnity Agreement attached thereto and made a part of the record FINDS that Kaiser Aluminum & Chemical Corporation has released Stamicarbon, B.V., from all claims arising out of the lawsuit brought by Kaiser Aluminum & Chemical Corporation against Stamicarbon, B.V.

THEREFORE, THIS COURT ORDERS that the lawsuit brought by Kaiser Aluminum & Chemical Corporation against Stamicarbon, B.V. only be dismissed with prejudice to the right to the bringing of any other future action.

IT IS SO ORDERED this 14th day of June, 1989.

H. Dale Cook
Honorable H. Dale Cook
Judge of the District Court

372-24/MPA/TGB/sam

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ADESCO, INC.,

Plaintiff,

v.

HERITAGE LIFE INSURANCE COMPANY, et al,

Defendants.

87-C-827-C

ORDER

Now before the Court for its consideration is the renewed motion of defendant Heritage Life Insurance Company (Heritage) for summary judgment.

On September 13, 1988, the United States Magistrate entered his Report and Recommendation (Report) regarding Heritage's motion for summary judgment as to all three counts of plaintiff's Complaint. The Magistrate recommended the granting of the motion as to Counts Two and Three, but its denial as to Count One. However, the Magistrate granted Heritage permission to "reurge its Motion for Summary Judgment as to the first cause of action after December 31, 1988, when discovery has been completed by Plaintiff". Report at 16. On January 10, 1989, the Court entered its Order affirming the Report. Nothing in that Order denied Heritage the right to reurge its motion. (January 10 Order at 6 n.3.)

Plaintiff's first cause of action is for slander. In the Court's January 10 Order, the Court rejected plaintiff's theory that the communications involved were slanderous per se. Thus, the present motion concerns whether plaintiff may maintain an

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action for slander per quod.

To maintain an action for slander per quod, plaintiff must plead and prove special damages. See, Krebsbach v. Henley, 725 P.2d 852, 856 (Okla. 1986). See also, Standifer v. Val Gene Management Services, Inc., 527 P.2d 28, 31 (Okla. App. 1974). The Magistrate declined to initially grant Heritage's motion for summary judgment as to Count One on the contingency that plaintiff be allowed additional discovery time for the purpose of establishing special damages. This additional time has passed, and in its response plaintiff points to no evidence of special damages. Accordingly, the present motion will be granted. See, Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

It is the Order of the Court that the renewed motion of the defendant Heritage Life Insurance Company for summary judgment is hereby granted.

IT IS SO ORDERED this 8th day of June, 1989.

H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Civil Action No. 88-C-463-B
SOLAR EXCAVATING, INC., et al., Defendants.	)	

STIPULATION OF DISMISSAL

The Plaintiffs, United States of America, by and through their attorney of record, Phil Pinnell, Assistant United States Attorney for the Northern District of Oklahoma, and the Defendants, Solar Excavating, Inc., and Charles L. Higgins, through their attorney of record, Michael J. Gibbens, stipulate to the dismissal with prejudice of this case with each party bearing its own costs and attorneys' fees.

Dated this 14th day of June, 1989.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

MICHAEL J. GIBBENS
Jones, Givens, Gotcher, Bogan
& Hilborne
3800 First National Tower
Tulsa, Oklahoma 74103
Attorney for Defendants
(918) 581-8200

PHIL PINNELL
Assistant United States Attorney
3600 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ALLAN H. APPLESTEIN,

Plaintiff,

vs.

PHARES ENGLE, et al.,

Defendants.

No. 88-C-1561-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within forty-five (45) days that settlement has not been completed and further litigation is necessary.

ORDERED this 12th day of June, 1989.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SASSY, INC.,

Plaintiff,

vs.

BABY CARE, INC.,

Defendant.

No. 88-C-1431-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 12th day of June, 1989.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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SDC/jch

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CINDY M. MATHENA and KURT MATHENA, Plaintiffs, vs. SKAGGS ALPHA BETA, INC., a Delaware Corporation, Defendant.	)	No. 88-C-1615-E

ORDER OF DISMISSAL

NOW on this 12 day of June, 1989, upon the written application of the Plaintiffs, Cindy M. Mathena and Kurt Mathena, and the Defendant, Skaggs Alpha Beta, Inc., for a Dismissal With Prejudice of the Complaint of Mathena v. Skaggs, and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the Plaintiffs, and that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiffs, Cindy M. Mathena and Kurt Mathena, against the Defendant, Skaggs Alpha Beta, Inc., be and the same hereby are dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DEBRA LYNN FLEMING and RITA DIANA DAWSON,	)	
Plaintiffs,	)	
v.	)	Case No.: 89-C-231C
WAL-MART STORES, INC., a Delaware corporation, doing business in Oklahoma,	)	
Defendant(s).	)	

FILED

JUN 1989

C. Silver, Clerk

ORDER OF DISMISSAL WITH PREJUDICE
AS TO RITA DIANA DAWSON ONLY

Pursuant to the Joint Stipulation of Dismissal filed by the plaintiff, Rita Diana Dawson, the Court dismisses, with prejudice, her Complaint against the defendant, Wal-Mart Stores, Inc., with each party being responsible for their costs and attorney fees incurred herein.

Dated this 6 day of June, 1989.

(Signed) H. Dale Cook

United States District Judge

Dawson-ODP

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

RONALD V. WOODROME,

Plaintiff,

vs.

SUN OIL COMPANY and SCAFFOLDING RENTAL & ERECTOR SERVICE, INC.,

Defendants.

No. 88-C-533-E

JUDGMENT

In accordance with the Order entered by the Court on the 9th day of May, 1989 finding that Defendant Sun Oil Company, whose true and correct corporate name is Sun Refining & Marketing Company, is absolutely immune from tort liability to the Plaintiff as the principal employer of the Plaintiff as defined by the Oklahoma Workers' Compensation Act, 85 O.S.Ann., Sec. 12;

IT IS THEREFORE ORDERED that judgment be entered in favor of Defendant Sun Refining & Marketing Company and against the Plaintiff, Ronald Woodrome, and the Plaintiff is to take nothing by way of his claim herein. All costs of this action shall be taxed to the Plaintiff.

ORDERED this 12 day of June, 1989.

S/ JAMES O. ELLISON

James O. Ellison
Judge of the United States
District Court

APPROVED AS TO FORM:

James L. Edgar, Esquire
Attorney for Plaintiff
Ronald V. Woodrome

Phil R. Richards, Esquire
Attorney for Defendant
Sun Refining & Marketing Co.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OTIS HAYES,

Plaintiff,

vs.

THE CROSLEY GROUP, Division of Maytag Corporation,

Defendant.

No. 88-C-1454-C

FILED

JUN 13 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF
DISMISSAL WITH PREJUDICE

WHEREAS, the Plaintiff and the Defendant have stipulated and agreed that all issues existing between the said parties have been fully and completely disposed of by settlement, and have requested the Court to enter an Order of Dismissal with Prejudice of the Plaintiff's complaint, which order shall dispose of this matter fully, finally and completely.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Plaintiff's complaint is hereby dismissed with prejudice and that all matters are fully, finally and completely diposed of.

DATED this 12th day of June, 1989.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

PAUL W. MARTIN,

Plaintiff,

v.

SOUTHWESTERN BELL TELEPHONE COMPANY,

Defendant.

No. 88-C-1345-E

ORDER OF DISMISSAL

This matter comes before the Court on the Joint Stipulation of Dismissal of the parties in this action. The Court finds this matter should be and is hereby ordered dismissed with prejudice to the refiling thereof.

/s/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TWENTIETH CENTURY FOX FILM CORPORATION, et al.,	)	
Plaintiffs,	)	
vs.	)	No. 89-C-115-E
RALPH PARKER and PARKER INTERESTS, INC. d/b/a SILVER SCREEN VIDEO,	)	
Defendants.	)	

STIPULATION OF JUDGMENT

This matter comes on before the Court at the request of plaintiffs, Twentieth Century Fox Film Corporation, Columbia Pictures Industries, Inc., Paramount Pictures Corporation, The Walt Disney Company, Universal City Studios, Inc., Warner Bros. Inc., Orion Pictures Corporation, Metro-Goldwyn-Mayer Pictures, Inc., United Artists Pictures, Inc., and Tri-Star Pictures, Inc., pursuant to a Settlement Agreement and Stipulation for Entry of Judgment.

The Court, having read and considered the Settlement Agreement and Stipulation for Entry of Judgment which has been duly executed by each of the parties in the within action and good cause appearing therefor, hereby finds that final judgment should be entered in the within action.

It is thereby ordered that judgment shall be and is hereby entered in the within action as follows:

1. Defendants, Ralph Parker and Parker Interests, Inc. ("defendants"), together with their agents, employees, attorneys and those acting in concert or conspiracy with them, who have

knowledge of this Judgment, are hereby permanently enjoined and restrained from doing any of the following:

a. Infringing plaintiffs' rights under copyright in all motion pictures duly copyrighted by plaintiffs, including but not limited to those identified in Exhibit "A" to the Complaint on file herein (the motion pictures identified in Exhibit "A" to the Complaint being referred to hereinafter as "the Subject Motion Pictures");

b. Manufacturing, copying, duplicating, selling, renting, marketing, leasing, distributing, performing or otherwise disposing of any unauthorized videocassette copies of the Subject Motion Pictures or of any other motion picture copyrighted by plaintiffs;

c. Using the titles of the Subject Motion Pictures, of any other of plaintiffs' copyrighted motion pictures, or the trademarks, trade names or logos of any of plaintiffs, on or in connection with unauthorized videocassettes in a manner which is likely to cause confusion, mistake or deception in connection with the distribution, advertising, promotion, sale, rental, and other lawful exploitation of authorized videocassettes or other copies of the Subject Motion Pictures, or of any other motion picture copyrighted by plaintiffs;

2. Damages are awarded against defendants and in favor of plaintiffs in the amount of $15,000.00.

3. All unauthorized videocassettes and packaging materials seized from defendants pursuant to the Temporary Restraining Order without Notice, Preliminary Injunction and Writ of Seizure and Impoundment (the "Order") entered on February 15, 1989, and

which are presently under impound by plaintiffs at 1000 ONEOK Plaza, Tulsa, Oklahoma 74103, pursuant to the Order, shall be released from impound and may be disposed of by plaintiffs as they deem appropriate.

4. The undertaking in the amount of $10,000 filed by plaintiffs in connection with the Order is ordered exonerated and discharged, and the surety of said undertaking shall have no further liability in connection therewith whatsoever.

5. Each side shall bear its own costs of suit incurred in the within action.

6. The Court shall retain jurisdiction of the action to entertain such further proceedings and to enter further orders as may be necessary or appropriate to implement and/or enforce the provisions of this Judgment.

DATED: 6/12/89, 1989.

UNITED STATES DISTRICT JUDGE

Presented by:

HUFFMAN ARRINGTON KIHLE GABERINO
& DUNN, a Professional Corporation

By: _____
Thomas J. Kirby, OBA #5043
Stuart D. Campbell, OBA #11246

1000 ONEOK Plaza
Tulsa, Oklahoma 74103
918/583-8141

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE PARCEL OF REAL PROPERTY WITH BUILDINGS, APPURTENANCES, AND IMPROVEMENTS, KNOWN AS 6022 S.W. 21 STREET, MIRAMAR, FLORIDA, AND ITS CONTENTS

Defendant.

No. 87-C-215-E

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff United States of America recover the property which is the subject matter of this action, that such property is forfeited to the United States of America, that the action be dismissed on the merits, and that Plaintiff recover its costs of action.

ORDERED this 12th day of June, 1989.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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FILED

JUN 13 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES W. GATES, et al.,

Plaintiffs,

vs.

QUINTON R. DODD, et al.,

Defendants.

Case No. 88-C-1356-E

ORDER OF DISMISSAL

NOW on this 12th day of June, 1989, comes on for consideration the above styled matter and the Court, being fully advised in all premises finds that Plaintiffs Charles W. and Francine Gates, husband and wife, have voluntarily moved the Court to dismiss the instant action, without prejudice to any other or future cause of action or claim for relief based upon the allegations contained in their original complaint as filed herein. Defendants have filed no objection to such dismissal and the Court determines such dismissal to be appropriate at this time.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case should be and is hereby dismissed without prejudice to any subsequent refiling.

JUDGE JAMES O. ELLISON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 13 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CHESTER SHORNHORST,

Plaintiff,

vs.

Case No. 88-C-1607-E

HELEN MILLER HORNER,

Defendant,

STIPULATION OF DISMISSAL

Comes now the Plaintiff, Chester Shornhorst, and pursuant to Federal Rule 41, respectfully requests this Court to dismiss his lawsuit herein without prejudice. In support thereof, Plaintiff is authorized to state that the attorney for the Defendant, Stephen Wilkerson, has no objection to the dismissal without prejudice of this cause of action and has affixed his signature hereto signifying his approval.

Dated this 13th day of June, 1989.

D. J. GOTTSCHALK, OBA 003497
ATTORNEY FOR PLAINTIFF
1418 East 71st St.--Suite 400
Tulsa, Oklahoma 74136
(918) 496-1184

STEPHEN C. WILKERSON
ATTORNEY FOR DEFENDANT
P.O. Box 1560
Tulsa, Oklahoma 74101-1560
(918) 584-6457

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

COMMUNITY BANK,

Plaintiff,

vs.

FARMERS INSURANCE CO., INC., and THE FARMERS INSURANCE GROUP FEDERAL CREDIT UNION,

Defendants.

No. 89-C-161 E

FILED

ORDER OF DISMISSAL WITH PREJUDICE

Upon the stipulation of the parties, it is hereby ordered that this cause be dismissed with prejudice as to the plaintiff's right to reassert any claim against the defendants which was or could have been asserted in the Petition filed by the plaintiff.

It is further ordered that the parties shall bear their own costs and fees incurred.

ORDERED this 12 day of June, 1989.

S/ JAMES O. ELLISON

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	Case No. 85-01693-C
CAESAR C. LATIMER,	Chapter 7
Debtor,	
KENNETH L. STAINER, Trustee,	Adversary No. 87-0055-C
Plaintiff/Appellee,	
v.	88-C-594-B
EMILY L. LATIMER, et al,	
Defendants/Appellants.	

ORDER

Now before the court is the appeal of defendants and Caesar C. Latimer from the Final Judgment of the United States Bankruptcy Court for the Northern District of Oklahoma, entered in an adversary proceeding on 4/11/88. An advisory hearing was held before Magistrate John Leo Wagner on 5/24/89 and oral arguments were heard. Having reviewed the pleadings and applicable law and being fully advised in this matter, the court finds as follows.

THE FACTS

In 1957, the debtor, Caesar C. Latimer ("Latimer"), an attorney, received legal title to a parcel of land, referred to as the "Hartford property", from his mother, Maria L. Latimer. Maria L. Latimer continued to use the property for herself and her children. In 1976 Latimer obtained permission from his

mother to renovate and use the property as a law office. Latimer also had legal title to several vacant lots and a studio.

In 1984 Andrea Van Dyke ("Van Dyke"), a client of Latimer, commenced a state court action against Latimer for mismanagement of legal affairs in Tulsa County District Court in Case No. CJ-84-600. A jury trial was held on 5/15/85 and 5/16/85 and the jury rendered a verdict in favor of Van Dyke in the sum of $47,200.00. The judgment in the state court action was reversed on 2/10/87, as to the issue of damages only, by the Oklahoma Court of Appeals and was remanded to the District Court for further proceedings with respect to determination of damages.

Two weeks prior to the state court trial, Latimer conveyed the parcels of real estate to his wife. The Hartford property was conveyed in trust for the benefit of his mother and the other properties were conveyed directly to his wife. After the transfer of the Hartford property in trust for Maria L. Latimer, a loan was made on this property for her support with North Side State Bank. The proceeds from the loan were deposited in a trust account at North Side State Bank and used for the support of Maria L. Latimer prior to her death.

Five months after the conveyances were made, on 10/4/85, Latimer filed his voluntary petition for bankruptcy under Chapter 7. Latimer listed in his Bankruptcy Schedule non-exempt properties he held jointly with his mother. Latimer's Bankruptcy Schedule also listed, as an unsecured creditor, the Judgment claim of Andrea Van Dyke for $50,000.00, which was later

reversed. Van Dyke then filed an adversary proceeding in the Bankruptcy Court for the Northern District of Oklahoma, No. 85-0331, seeking a denial of Latimer's discharge in his Chapter 7 proceeding because of his alleged fraudulent conveyances. The Bankruptcy Court denied Latimer's discharge on 11/25/86, finding that fraudulent conveyances had been made.

On 11/19/85 Maria L. Latimer passed away and the property was conveyed to her surviving heirs, Julia Latimer Warren, Reta Latimer Wright, James Harold Latimer, and Charles Sylvester Latimer by Emily L. Latimer, Trustee. Latimer did not participate because of the Bankruptcy.

On 12/2/86 Latimer commenced a proceeding, Case No. 86-C-1070-E, in the United States District Court for the Northern District of Oklahoma, appealing the denial of his discharge in adversary proceeding 85-0331. He sought an abatement of the adversary proceeding brought by Van Dyke because the Oklahoma Court of Appeals had reversed the issue of damages in the malpractice action. The district court refused to stay the adversary proceedings. On 9/25/87 U. S. District Judge James O. Ellison affirmed the Order of the Bankruptcy Court in Case No. 86-C-1070-E, stating as follows:

> In its Order denying discharge the Bankruptcy Court found that Defendant conveyed five properties to his wife on May 3, 1985 and another property to his wife and mother on May 10, 1985, that Defendant did not receive any consideration for the transfers, and that Defendant filed his bankruptcy petition on October 4, 1985. The Court also found that Defendant introduced insufficient evidence to prove that the properties were originally purchased with funds primarily provided

by other family members. Based on the transfers of property to family members without consideration during the pendency of litigation, the Bankruptcy Judge found that the conveyances to the debtor's wife were made with an intent to defraud creditors.

Under Bankruptcy Rule 8013 this Court must accept the findings of the Bankruptcy Judge unless they are clearly erroneous. The Court has reviewed the transcript of the hearing and reviewed the exhibits. Based on the evidence adduced at trial this Court is satisfied that the findings of fact made by the Bankruptcy Court are correct. The six properties were held in the name of the debtor, Caesar Latimer. Although Mr. Latimer testified that these properties were either given to him by his mother or that he purchased them with funds belonging to his wife, he also admitted that he had put his own money into some of the properties. Furthermore, in a writing introduced as Plaintiff's exhibit 9 Mr. Latimer stated, 'I conveyed the property back to my mother in May 1985 under a threat of federal tax liens.' Considering the fact that Mr. Latimer was a defendant in a law suit which went to trial shortly after the conveyances to his wife were executed, that he received no consideration for the transfers, and that he admitted holding legal title and having some equitable interest in the property, the bankruptcy court was justified in finding that the conveyances were made for the purpose of defrauding Mr. Latimer's creditors.

Under 11 U.S.C. §727(a)(2)(A) the Court may deny a discharge to a debtor who has transferred property of the debtor's estate with an intent to hinder, delay or defraud a creditor, and such transfer has occurred within one year of the filing of the petition. On the basis of the Bankruptcy Court's finding of the fraudulent transfer of the property within one year of the date of the filing of the debtor's petition, the Bankruptcy Court correctly denied the debtor's discharge.

Latimer appealed the court's 9/25/87 order, but on 3/4/88 the appeal was dismissed for want of prosecution.

On 5/7/87 the Trustee commenced the adversary proceeding resulting in this appeal, Case No. 87-0055-C, to recover from

Emily L. Latimer, Latimer's wife, the seven parcels of property which had allegedly been fraudulently conveyed to her. During the pretrial proceedings in the adversary proceeding, the Trustee learned that Emily L. Latimer had conveyed various undivided interests in one of the subject parcels of real property to the living brothers and sisters of Latimer. The Trustee therefore made application to the Bankruptcy Court to join as additional parties-defendant the various grantees of Emily L. Latimer, who are now also appellants before this Court.

While this bankruptcy adversary proceeding was pending, Tulsa Development Authority purchased the Hartford property from Emily L. Latimer and the heirs of Maria L. Latimer, deceased, for $26,500.00. This money is now in the hands of the Trustee, but the appellants claim it belongs to them through inheritance.

At the trial of the adversary proceeding on 4/11/88, the Honorable Stephen J. Covey found from the evidence presented that Latimer had conveyed the seven parcels of real property, which are the subject of this action, to Emily L. Latimer, and she to the other defendants, fraudulently with respect to creditors of Latimer, that no consideration was received for these transfers, and that the Trustee, under the provisions of 11 U.S.C. §§ 544-550, was able to avoid the transfers in question and recover for the estate, for the benefit of creditors, all parcels of real property conveyed by Latimer in May of 1985 and the proceeds paid from the sale of the Hartford property.

The appellants then filed their Notice of Intent to Appeal on all issues and perfected this appeal. Appellants allege that Latimer has standing to participate in and object to the adversary proceedings, that the Bankruptcy Court did not have personal jurisdiction over appellants to determine their claim to the properties, that the court erred in denying them their right to a jury trial, and that the conclusions of the judge that the transfers were fraudulent were clearly erroneous.

The appellee claims that Latimer has no standing in this proceeding, as he was not a party to it, that the Bankruptcy Court had jurisdiction over the appellants by reason of their entry of appearance in the action, that appellants waived their right to jury trial by failing to make a timely request for such, that the conclusions of the judge were not clearly erroneous, and that the transfers of the property were fraudulent.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a).[1]

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd

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[1] 28 U.S.C. § 158(a) reads as follows:

> The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

LATIMER HAS NO STANDING TO PARTICIPATE IN THIS PROCEEDING

The court finds that Latimer was not a party to the proceedings below which gave rise to this appeal and he did not make application to intervene. Additionally, Latimer litigated the issues presented herein in the prior adversary proceeding in Bankruptcy Case No. 85-0331-C. Appellee has properly asserted that res judicata applies here, because the issue decided in the prior litigation was identical to the issue presented in the present case, there was a final judgment on the merits in the prior litigation, and Latimer was a party in the prior case. Blonder-Tongue v. University Foundation, 402 U.S. 313, 323 (1971). Because Latimer has litigated the question of the fraudulent aspect of the conveyance of the subject parcels of real property, the court finds that he is barred by the doctrine of res judicata from this appeal of the case that relitigated that issue. In addition, the remaining defendants are in privity to Latimer, as their property rights are successive to his, and they are therefore collaterally estopped from relitigating the

issues presented in the prior proceeding. "'Collateral estoppel can be invoked by a stranger to the judgment against one who was a party, or in privity with the party, to the judgment and had a full opportunity in the prior action to litigate the relevant issue.'" Anco Mfg. & Supply Co. v. Swank, 524 P.2d 7, 13 (Okla. 1974).

THE BANKRUPTCY COURT HAD PERSONAL JURISDICTION OVER THE REMAINING APPELLANTS TO ADJUDICATE THE ISSUES NOW ON APPEAL

The Bankruptcy Court for the Northern District of Oklahoma had subject matter jurisdiction in the below adversary proceeding by virtue of 28 U.S.C. § 1334 and 11 U.S.C. §§ 544-550. Defendants do not assert that the Bankruptcy Court lacks subject matter jurisdiction to proceed in the adversary proceeding, but claim that they are not subject to the in personam jurisdiction of the trial court. However, the record on appeal in this cause clearly reflects that docket number 13 of the adversary proceeding, the Order Denying Motion to Dismiss Staying Further Proceedings and Enjoining Defendants, shows the entry of appearance by all additional parties-defendant in this cause on that date by their then counsel Paul Garrison, thereby making all the defendants subject to the court's in personam jurisdiction. The court finds that the defendants voluntarily appeared in the proceeding now being appealed and have consented to the assumption of in personam jurisdiction over them by the trial court.

DEFENDANTS WAIVED THEIR RIGHT TO A JURY TRIAL

The United States Supreme Court, in Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 50 (1982), held that bankruptcy courts were without jurisdiction to conduct jury trials. Congress subsequently amended 28 U.S.C. § 1334, which vests the United States District Courts with original, but not exclusive, jurisdiction in all civil proceedings arising under Title 11 of the U. S. Code. In re Hoffman, 33 B.R. 937 (Bkr. W.D.Okla. 1983).

The court finds that defendants' first request for jury trial in this matter was presented at a pretrial conference held on 2/19/88. The minute order contained in the docket sheet for the adversary proceeding below reflects that on that date an oral motion for jury trial was made by defendants and, properly, denied by the trial court. Defendants failed to request transfer of the adversary proceeding to the District Court in order to receive a jury trial on the issues. Their failure to request such a transfer effectively waived their right to jury trial.

THE BANKRUPTCY JUDGE DID NOT ERR IN FINDING THAT THE CONVEYANCES AT ISSUE WERE FRAUDULENT

Under 11 U.S.C. § 548(a), the trustee may avoid any transfer of an interest of the debtor in property made within one year of the filing of the bankruptcy petition, if such transfer was made with an intent to hinder, delay, or defraud a creditor. The facts of the case show that there are at least two claims against the bankruptcy estate -- Van Dyke's Judgment from her lawsuit and

a claim for unpaid taxes. The evidence shows that six properties were held in the name of Latimer. Although Latimer testified that these properties were either given to him by his mother or that he purchased them with funds belonging to his wife, he also admitted that he had put his own money into some of the properties. Furthermore, Latimer stated in writing that "I conveyed the property back to my mother in May 1985 under a threat of federal tax liens." Latimer conveyed five properties to his wife on 5/3/85 and another property to his wife and mother on 5/10/85 and filed his bankruptcy petition on 10/4/85.

Considering the fact that Latimer was a defendant in a lawsuit which went to trial shortly after the conveyances to his wife were executed, that he received no consideration for the transfers, and that he admitted holding legal title and having some equitable interest in the property, the bankruptcy court was correct in finding that the facts show conveyances made for the purpose of defrauding Latimer's creditors. Under bankruptcy law, the Trustee could avoid the property transfer and take legal title to the real property. The issue of the ownership of equitable title in and to the subject real properties was not a proper issue to be decided by the bankruptcy judge and was not decided by him.

CONCLUSION

For the foregoing reasons, the court affirms the decision of the United States Bankruptcy Court for the Northern District of Oklahoma entered on 4/11/88.

Dated this 12th day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WORTHEN MORTGAGE COMPANY, Plaintiff, vs. RONALD MAIN, et al., Defendant and Third Party Plaintiff, vs. VETERANS ADMINISTRATION, Third Party Defendant.	)	No. 87-C-516-E

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that Third Party Plaintiff Ronald Main take nothing from the Third Party Defendant Veterans Administration, that the action be dismissed on the merits, and that the Third Party Defendant Veterans Administration recover of Third Party Plaintiff Ronald Main its costs of action.

ORDERED this 12TH day of June, 1989.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity,

Plaintiff,

vs.

CARLOS B. LANGSTON and CARLOS V. LANGSTON, a/k/a CARLOS B. LANGSTON, SR., CARLOS LANGSTON, SR., or CARLOS V. LANGSTON, SR.

Defendants.

Case No. 89-C-122-B

ORDER OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF SECOND CLAIM FOR RELIEF OF FDIC'S AMENDED COMPLAINT

Pursuant to the Stipulation for Voluntary Dismissal and for good cause shown, it is hereby ordered that Plaintiff Federal Deposit Insurance Corporation's Complaint, Amended Complaint and each claim for relief asserted therein as against Defendant Carlos V. Langston is hereby dismissed without prejudice and Plaintiff Federal Deposit Insurance Corporation's Second Claim for Relief as set forth in its Amended Complaint is hereby dismissed without prejudice, each party to bear their own attorney's fees, costs and expenses and incurred herein.

Dated this 12 day of June, 1989.

Jeffrey S. Wolfe THOMAS R. BRETT
United States Magistrate JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEWIS D. PRUETT, JUANITA J. PRUETT and BERT PRUETT, Plaintiffs,	)	
v.	)	No. 88-C-933-B
AETNA CASUALTY & SURETY COMPANY, a corporation, Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon Joint Application for Dismissal With Prejudice of the parties herein,

IT IS ORDERED, ADJUDGED AND DECREED that the captioned matter is hereby dismissed with prejudice.

Dated this 12 day of June, 1989.

S/ THOMAS R. BRETT

U. S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

NATIONAL AVIATION UNDERWRITERS, as attorney-in-fact for NATIONAL INSURANCE UNDERWRITERS, a reciprocal insurance company,

Plaintiff,

v.

RICK ROMANS, INC.,

Defendant.

Case No. 88-C-1114B

ADMINISTRATIVE CLOSING ORDER

Defendant Rick Romans, Inc. having filed a Motion for Administrative Closing Order in the above-styled case and Plaintiff having joined in said motion, IT IS HEREBY ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within thirty (30) days of July 21, 1989, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 12 day of June, 1989.

S/ THOMAS R. BRETT

THE HON. THOMAS R. BRETT
United States District Judge for
the Northern District of Oklahoma

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DIVISION NO. 892 OF THE AMALGAMATED TRANSIT UNION, et al.,	)	
Plaintiffs,	)	
vs.	)	Case No. 88-C-191-B
METROPOLITAN TULSA TRANSIT AUTHORITY, a Public Trust Authority, et al.,	)	
Defendants.	)	

STIPULATED JUDGMENT OF DISMISSAL

Upon consideration of the Stipulation for Entry of Judgment submitted by all parties to this action, and in view of the parties' desire that the above styled cause of action be dismissed without prejudice upon the advice and assistance of counsel, it is hereby

ORDERED that this action be dismissed without prejudice, each party to bear its own attorneys fees and costs.

SO ORDERED this 12 day of June, 1989.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LOCAL AMERICA BANK OF TULSA, a federal stock savings bank, successor to specified assets of FIRST OKLAHOMA SAVINGS BANK, F.A., a federally chartered savings bank, formerly known as FIRST OKLAHOMA SAVINGS & LOAN ASSOCIATION OF TULSA,

Plaintiff,

vs.

ROY E. THIGPEN, III, et al.,

Defendants.

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 88-C-1334-B

ORDER OF DISMISSAL

THIS MATTER comes before the Court upon the oral motion of the parties for an Order dismissing this action. After reviewing the pleadings on file and hearing the arguments of counsel, this Court finds as follows:

1. That a Chapter Seven (7) bankruptcy proceeding is pending against the Defendant Thigpen in the United States Bankruptcy Court for the Northern District of Oklahoma under Case No. 88-02015-W. That William R. Grimm was appointed Trustee for Thigpen and was substituted as the real party-in-interest for Thigpen in this matter on February 17, 1989.

2. That this matter should be dismissed subject to the right reserved to Local America Bank of Tulsa to re-open this case in the event the Thigpen bankruptcy is dismissed. Such right of Local America Bank of Tulsa to re-open this matter shall

be waived if not exercised within ninety days after the dismissal of the Thigpen bankruptcy action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this matter be dismissed subject to the right of Local America Bank of Tulsa to re-open this action in the event the bankruptcy action of Roy E. Thigpen, III, United States Court for the Northern District of Oklahoma, Case No. 88-02015-W is dismissed, such right to expire if not exercised within ninety days of the dismissal of the Thigpen bankruptcy.

DONE this 12th day of June, 1989.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JONES, GIVENS, GOTCHER, BOGAN & HILBORNE
a professional corporation

By: _____

Thomas A. Creekmore III, OBA #2011
Randall J. Snapp, OBA #11169
3800 First National Tower
Tulsa, Oklahoma 74103
(918) 581-8200

ATTORNEYS FOR PLAINTIFF, LOCAL AMERICA BANK OF TULSA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL DOUGLAS MCNEIL,

Plaintiff,

v.

RON CHAMPION, et al,

Defendants.

89-C-387-B

ORDER

Plaintiff's Motion to Proceed In Forma Pauperis was granted and Plaintiff's Complaint was filed. Plaintiff brings this action pursuant to 42 U.S.C. §1983.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether or not the Plaintiff can make a rational argument on the law or the facts to support his claim. Van Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit, for the following reasons.

Plaintiff brings suit against the sixteen (16) defendants requesting $32 million in damages, alleging violations of freedom of religion, equal protection and due process, and restrictions of access to the courts. Specifically, Plaintiff alleges in Count 1: "My First Amendment Rights to Freedom of Religious Belief, Expression, and Practice are Being and have been

Violated by the defendants. See Supporting Brief and Exhibits."

Plaintiff has not articulated any facts in support of his claim. Even after review of the entire eighty-nine (89) page Complaint, Brief in Support, and Exhibits, the most that can be gleaned is that Plaintiff was denied a grooming policy exemption for growing a beard, and that on January 1, 1989 Plaintiff was made a minister of the First Christian Essene Church[1].

To be protected by the Free Exercise Clause of the First Amendment, a belief or practice must be "rooted in religion". Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707, 713 (1981). Furthermore, the belief must be sincerely held. Id. Additionally, a Plaintiff must assert that the state has somehow placed a burden upon his religion. School District Of Abington v. Schempp, 374 U.S. 203, 233 (1963). Finally, a prisoner plaintiff must assert that the prison regulation burdening his free exercise of religion is not reasonably related to legitimate penological interests. Turner

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[1] The exhibits contain a **"Certificate of Ordination"** dated January 1, 1989, signed by Archbishop Norman Wilson Bordeaux Szedely, and a letter dated January 23, 1989 addressed to Plaintiff from someone named "Swallow" on letterhead of the "International Biogenic Society" which reads, in part,

> The Essene Church, as founded by Dr. Edmond Bordeaux Szedely, and now carried on by his sole heir and successor, me, has been in valid existence for more than fifty years ... You can also tell them that you are an Essene Minister, and if it will help, I will be glad to send you a Certificate proving this fact, but I will need to know your full name and also where you live when you are not the unwilling guest of the state of Oklahoma". (Emphasis in the original.) (At p. 44-45.)

v. Safley, 107 S.Ct. 2254, 2261 (1987).

Here, because Plaintiff had not set forth (a) what belief or practice is being prevented, (b) whether the belief or practice is rooted in religion, (c) whether the belief is sincerely held, (d) whether a burden is being placed on his religion, or (e) whether the offensive prison regulation is unreasonably related to a legitimate penological objective, Plaintiff can simply make no rational argument on the law, in light of the absence of facts, to support his claim.

Likewise, in his second court, Plaintiff merely alleges **"My Fourteenth Amendment Rights to Equal Protection and Due Process are being and have been Violated by the Defendants. See, Supporting Brief and Exhibits"**. Yet, Plaintiff does not state what process was due or how it was denied, nor does he clearly state how he has been treated differently from similarly situated persons.

The only statement in Plaintiff's eighty-nine (89) page pleading which attempts to set out the factual basis for his claim is found at page 16 (para. 7) wherein he claims,

> Plaintiff has been denied the privileges enjoyed by other prisoners who have been granted exemptions to the grooming regulation and who are allowed religious diets, solely because of his religious beliefs.

Nevertheless, (as discussed above) Plaintiff simply fails to describe his own religious beliefs or practices, and Plaintiff fails to demonstrate how he is similarly situated to prisoners having received exemptions. (E.g., Glasshofer v. Thornburgh, 514 F.Supp. 1242 (E.D. Pa. 1981), affirmed, 688 F.2d 821 (3rd Cir.

1982).) On the law and this absence of facts, Plaintiff is unable to make a rational argument to support his claim.

Again, in his third and last count, Plaintiff alleges only,

> My Access to the Courts has been Restricted - Violation of 14th Amendment Rights to Due Process. See Exhibits and Supporting Brief.

The only document found after combing the exhibits which has any relevance to this claim is at page 83. The document is a request for sixteen (16) copies to be made of seventy-three originals. The document reflects the request was denied because Plaintiff had "insufficient" funds to pay for the requested 1168 photocopies. There is on rational argument which can be made on the law and these facts to support Plaintiff's third claim.

Plaintiff's claims, even liberally construed, must be considered as frivolous. This a dearth of factual allegations to support the conclusory pleading of Plaintiff's Complaint, and hold the sixteen (16) named defendants liable for $32 million dollars in damages for which Plaintiff prays.

Plaintiff's Complaint is hereby dismissed pursuant to 28 U.S.C. §1915(d).

SO ORDERED this 12 day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

KIP W.L. SYLVESTER,

Plaintiff,

v.

DR. BARNES, et al,

Defendants.

89-C-411-B

ORDER

Plaintiff's Motion to Proceed in Forma Pauperis was granted and Plaintiff's Complaint was filed. Plaintiff brings this action pursuant to 42 U.S.C. §1983, seeking $2 million in damages and injunctive relief.

The Complaint is now to be tested under the standard set forth in 28 U.S.C. §1915(d). If the Complaint is found to be obviously without merit, it is subject to summary dismissal. Henriksen v. Bentley, 644 F.2d 852, 853 (10th Cir. 1981). The test to be applied is whether the Plaintiff can make a rational argument on the law or the facts to support his claim. Ban Sickle v. Holloway, 791 F.2d 1431, 1434 (10th Cir. 1986). Applying the test to Plaintiff's claims, the Court finds that the instant action should be dismissed as obviously without merit, for the following reasons.

An obviously unhappy prisoner while confined in the Creek County, Oklahoma jail, Plaintiff files this suit accusing the de jure guardians of Plaintiff's corpus[1] of, inter alia, breaching

[1] Specifically, Plaintiff named as Defendants, the "Creek County Jail, et al" and the "Creek County Sheriff's Dept.".

their **"oath of office and loyalty"** engaging in an illegal enterprise designed to **"seek vegences (sic) upon all persons that are poor and or (sic) not members of their political parties"** (Count II), and not allowing Plaintiff **"to hand over property personally to jailer and recieve (sic) a property & money reciept (sic)"** while transporting Plaintiff's personal property separately from Plaintiff (Count III).

Plaintiff, however, makes only conclusory allegations of improprieties by the unspecified defendants. Plaintiff neither identifies the specific constitutional rights allegedly deprived, nor does Plaintiff set forth the manner in which the rights were deprived, nor does Plaintiff single out the persons committing the acts leading to the deprivations.

As the Tenth Circuit Court of Appeals held in Wells v. Ward, 470 F.2d 1185 (1972),

> The existence of the §1983 remedy does not require that federal courts entertain all suits in which unconstitutional deprivations are asserted. A federal constitutional question must exist 'not in mere form, but in substance, and not in mere assertion, but in essence and effect' Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co., 252 U.S. 388, 397, 40 S.Ct. 404, 408, 64 L.Ed. 626.

Because Plaintiff's Complaint appears to be obviously without substance, that is, Plaintiff cannot make a rational argument on the law and these facts to support his claims, it must be dismissed pursuant to 28 U.S.C. §1915(d).

IT IS SO ORDERED this 12 day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SHOAN MARR,

Plaintiff,

v.

OTIS R. BOWEN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant.

88-C-253-B

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The court has for consideration the Amended Findings and Recommendations of the Magistrate filed May 23, 1989, in which the Magistrate recommended that this case be remanded to the Secretary. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Amended Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that, there being findings of pain and an affective disorder, this case is remanded to the Secretary for consideration by a vocational expert to ascertain if an individual with this type of pain, affective disorder, young age, and lack of training and work experience can maintain employment in any job that exists in the national economy.

Dated this 12th day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

GLORIA DENISE CURLS,

Plaintiff,

v.

MARY LIVERS, WARDEN

Defendant.

89-C-302-B

ORDER TO TRANSFER CAUSE

The Court having examined the Petition for Writ of Habeas Corpus which the Petitioner has filed finds as follows:

(1) That the Petitioner is presently a prisoner in the custody of the Respondents at the Mabel Bassett Correctional Center, Oklahoma City, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma.

(2) That the Petitioner demands her release from such custody and as grounds therefore alleges she is being deprived of her liberty in violation of rights under the Constitution of the United States.

(3) In the furtherance of justice this case should be transferred to the United States District Court for the Western District of Oklahoma.

IT IS THEREFORE ORDERED:

(1) Pursuant to the authority contained in 28 U.S.C. §2241(d) and in the exercise of discretion allocated to the Court, this cause is hereby transferred to the Untied States District Court for the Western DIstrict of Oklahoma for all further proceedings.

(2) The Clerk of this Court shall mail a copy of this Order to the Petitioner.

Dated this 2 day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

SCW/jch

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DOYLE MATTHEWS d/b/a DOYLE MATTHEWS DRILLING CO.,

Plaintiff,

vs.

THE HOME INSURANCE COMPANY, a New Hampshire corporation,

Defendant.

No. 88-C-441-E

ORDER OF DISMISSAL

NOW on this 12th day of June, 1989, upon the written application of the Plaintiff, Doyle Matthews d/b/a Doyle Matthews Drilling Co., and the Defendant, The Home Insurance Company, for a dismissal with prejudice of the Complaint of Matthews v. Home, and all causes of action therein, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being fully advised in the premises finds said settlement is to the best interest of the Plaintiff, and that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff, Doyle Matthews d/b/a Doyle Matthews Drilling Co., against the Defendant, The Home Insurance Company, be and the same hereby are dismissed with prejudice to any future action.

JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVALS AS TO FORM:

GARY L. RICHARDSON

Attorney for the Plaintiff

JOHN B. STUART

Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GARY DEAN SUTTON,

Plaintiff,

vs.

DIRECTOR OF EASTERN STATE HOSPITAL, et al.,

Defendants.

No. 85-C-357-B

O R D E R

This matter comes before the Court upon Plaintiff's Motion to Vacate or Set Aside an Order of Dismissal pursuant to Fed.R.Civ.P. 60 (b)(5) and (6). This Court dismissed Plaintiff's civil rights suit on September 25, 1986, because the applicable statute of limitations had run. Plaintiff now seeks reconsideration of this Order alleging Plaintiff was under a legal disability from March 1980 until April 1984.

The record indicates that Plaintiff was discharged from Eastern State Hospital on June 4, 1980, and was not readmitted until May 16, 1984. There is no evidence Plaintiff was under a legal disability between June 1980 and May 1984, the time in which the statute of limitations expired. Plaintiff has come forward with no evidence not previously considered by this Court to warrant it to vacate its Order pursuant to Rule 60 (b).

It is therefore ORDERED that Plaintiff's Motion to Vacate or Set Aside Order of Dismissal be OVERRULED.

DATED, this 12th day of June, 1989.

Thomas R. Brett
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TIM L. IPOCK,

Plaintiff,

v.

E. W. BLISS CO., et al

Defendants.

88-C-578-C BV

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed April 10, 1989, in which the Magistrate recommended that summary judgment be granted in favor of defendant Sun Refining and Marketing Company. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that summary judgment is granted in favor of Sun Refining and Marketing Company ("Sun") and plaintiff's alleged cause of action against Sun is dismissed with prejudice, as plaintiff has not met his burden to show that Sun's failure to inquire as to the safety of the machinery caused plaintiff's injuries.

Dated this 12 day of June, 1989.

UNITED STATES DISTRICT JUDGE

38

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HARRY BROOKS, JR.,

Plaintiff,

v.

JERRY DUFF, et al,

Defendants.

88-C-1456-B

ORDER

There being no response to the defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgement [sic] (Docket #8),[1] and more than fifteen (15) days having passed since the filing of such motion, and no extension of time having been sought by plaintiff, the court, pursuant to Local Rule 15A[2] of the Northern District of Oklahoma, concludes that plaintiff has therefore waived any objection or opposition to the motion. See, Joplin v. Southwestern Bell Telephone Co., 671 F.2d 1274 (10th

[1] "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

[2] Local Rule 15A provides as follows:

Briefs. Each motion, application and objection filed in every civil and criminal case shall set out the specific point or points upon which the motion is brought and shall be accompanied by a concise brief. Memoranda in opposition to such motion and objection shall be filed within fifteen (15) days in a civil case, and within five (5) days in a criminal case, after the filing of the motion or objection. Any reply memoranda in a civil case shall be filed within eleven (11) days thereafter. Failure to comply with this paragraph will constitute waiver of objection by the party not complying, and such failure to comply will constitute a confession of the matters raised by such pleadings.

Cir. 1982).

Defendants' Motion to Dismiss plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983 is therefore granted.

It is so ordered this 17 day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. LEEMON L. PETERSON, a/k/a LEEMON LEROY PETERSON, a/k/a LEEMON PETERSON, Defendant.	)	**FILED** JUN 12 1989 Jack C. Silver, Clerk U.S. DISTRICT COURT CIVIL ACTION NO. 88-C-1459-B

DEFAULT JUDGMENT

This matter comes on for consideration this 12 day of June, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Leemon L. Peterson, a/k/a Leemon Leroy Peterson, a/k/a Leemon Peterson, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Leemon L. Peterson, a/k/a Leemon Leroy Peterson, a/k/a Leemon Peterson, was served with Summons and Complaint on April 10, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Leemon L. Peterson, a/k/a Leemon Leroy Peterson, a/k/a Leemon Peterson, for the principal amount of $2,443.69, plus accrued interest of $16.87 as of August 25, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.85 percent per annum until paid, plus costs of this action.

S/ [illegible]
UNITED STATES DISTRICT JUDGE

cen

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DARLENE GATLIN,

Defendant.

CIVIL ACTION NO. 89-C-124-B

DEFAULT JUDGMENT

This matter comes on for consideration this 12 day of June, 1989, the Plaintiff appearing by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Darlene Gatlin, appearing not.

The Court being fully advised and having examined the court file finds that Defendant, Darlene Gatlin, acknowledged receipt of Summons and Complaint on March 10, 1989. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Darlene Gatlin, for the principal amount of $676.50, plus accrued interest of $170.61 as of November 16, 1988, plus interest thereafter at the rate of 3 percent per annum until judgment, and in the principal amount of $633.69, plus accrued interest of $225.19 as of November 16, 1988, plus interest thereafter at the rate of 5 percent per annum until judgment, plus interest thereafter at the current legal rate of 8.86 percent per annum until paid, plus costs of this action.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

cen

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUN 12 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

BIGHEART PIPELINE CORPORATION AND CONSOLIDATED SUBSIDIARIES,	)	
Plaintiffs,	)	
vs.	)	CIVIL NO. 86-C-1096-B
UNITED STATES OF AMERICA,	)	
Defendant.	)	

ORDER

The Court has before it for consideration the Motion To Substitute Successor In Interest As Plaintiff.

Finding that good cause exists for the granting of the Motion, it is hereby ordered that Koch Industries, Inc. is substituted as Plaintiff for Bigheart Pipeline Corporation in the above-styled action.

IT IS SO ORDERED this 12 day of June, 1989.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CIVIL ACTION NO. 89-C-1100-B
TWO VEHICLES, et al., Defendants.	)	

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and the Claimant, Sharon (Songer) Sons hereby stipulate to dismissal against the Defendant Property known as:

One 1985 Mercedes Benz
Automobile, Model 280 CE,

(Gray Market)
VIN No. WDB1230531A222905,

without prejudice and without costs, pursuant to the terms and conditions of the Release of Claim of Seized Property and

Indemnity Agreement entered into by and between the parties on June ___, 1989.

TONY M. GRAHAM
United States Attorney

CATHERINE J. DEPEW
Assistant United States
Attorney for the
UNITED STATES OF AMERICA

CLARK O. BREWSTER
Attorney for Claimant,
Sharon (Songer) Sons

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

VERNETTA B. CARTER, Plaintiff,	)	
vs.	)	Case No. 87-C-976-B
SAINT FRANCIS HOSPITAL, INC., Defendant.	)	

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Plaintiff, VERNETTA B. CARTER, and the Defendant, SAINT FRANCIS HOSPITAL, INC., and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismiss, with prejudice, the above styled cause of action.

ATTORNEYS FOR DEFENDANT,
SAINT FRANCIS HOSPITAL, INC.

Stephen L. Andrew
McCORMICK, ANDREW & CLARK
A Professional Corporation
Suite 100, Tulsa Union Depot
111 East First Street
Tulsa, Oklahoma 74103
(918) 583-1111

ATTORNEYS FOR PLAINTIFF,
VERNETTA B. CARTER

D. Gregory Bledsoe

Randy A. Rankin

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MELISSA PATTERSON, Plaintiff, -vs- HUDSON FARMS, INC., and LYLE JOHNSTON, Defendants.	)	Civil Action No. 88-C-273-E

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties hereto, by and through their attorneys of record, hereby stipulate pursuant to Federal Rule of Civil Procedure 14(a)(1)(ii) that this action should be, and hereby is dismissed, with prejudice. Each party is to bear her or its own attorney's fees and costs of this action.

For Plaintiff,

MELISSA PATTERSON

Gregory Bledsoe

Stanley D. Monroe
1515 South Denver
Tulsa, OK 74119-3828
918-599-8118
OBA #6305

For Defendants,

HUDSON FARMS, INC., and
LYLE JOHNSTON

Lloyd E. Cole, Jr.
120 W. Division
Stilwell, OK 74960
918-696-7331
OBA #1777

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIFORD ENERGY COMPANY, WILLIFORD, INC., GLEN RICE, JIM J. CLIFTON, and BEN SMITH Plaintiffs, vs. ARKLA, INC., a Delaware corporation, ARKANSAS-LOUISIANA GAS COMPANY, a Delaware corporation, and ARKLA ENERGY RESOURCES, a division of ARKLA, INC.,	No. 88-C-1664-E ✓

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiffs, Williford Energy Company, Williford, Inc., Glen Rice, Jim J. Clifton, and Ben Smith and Defendants, Arkla, Inc., and Arkla Energy Resources, Inc., a division of Arkla, Inc., by and through their respective counsels, hereby jointly stipulate and agree that this action may be and hereby is dismissed with prejudice, with each party to bear its own costs.

Dated this 6th day of June, 1989.

Respectfully submitted,

HOLLIMAN, LANGHOLZ, RUNNELS & DARWARD, P.C.

By _____
Frederic Dorwart
J. Michael Medina
Suite 700
Holarud Building
10 East 3rd Street
Tulsa, Oklahoma 74103
(918) 584-1471

ATTORNEYS FOR PLAINTIFFS WILLIFORD ENERGY COMPANY, WILLIFORD, INC., GLEN RICE, JAMES CLIFTON and BEN SMITH

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.

By _____
Richard T. McGonigle, OBA #11675
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172
(918) 588-2700

and

LEMLE, KELLEHER, KOHLMEYER, DENNERY, HUNLEY, MOSS & FRILOT

Ernest L. Edwards, Jr.
Amy L. Baird
21st Floor, Pan-American Life Center
601 Poydras Street
New Orleans, Louisiana 70130-6097
(504) 586-1241

ATTORNEYS FOR DEFENDANTS ARKLA, INC., and ARKLA ENERGY RESOURCES, INC.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES W. BUTLER et al,
Plaintiffs,

vs.

JUANITA WALLACE, JUANITA WALLACE dba PEE WEE DAY CARE CENTER, and O.B. GRAHAM, an ATTORNEY,
Defendants.

CASE NO. 89-C-0385-B

JUDGMENT BY DEFAULT

In this action, the Defendants Juanita Wallace dba Pee Wee Day Care Center, and O.B. Graham, an Attorney, having been regularly served with process, and having failed to appear and answer the Plaintiffs' Complaint filed herein, the legal time for answering having expired, and no answer, or other pleading having been filed, the default of Defendants was entered according to law, upon application of Plaintiffs to the Clerk and after proof of service of summons. Now, in pursuance of the prayer of the Complaint, and in accordance with law.

IT IS ORDERED AND ADJUDGED that Plaintiffs, James W. Butler, and his minor children, have and recover from Defendants, Juanita Wallace dba Pee Wee Day Care Center, and O.B. Graham, an Attorney, judgment in the sum of $170,000.00, with interest thereon at the rate of fifteen (15%) percent per annum from the date hereof, until paid, together with Plaintiffs' costs and

JUDGMENT BY DEFAULT CONTINUED:

disbursements incurred in this action, amounting to the sum of $205.55.

DATED THIS 6th DAY OF JUNE, 1989.

CLERK OF THE UNITED STATES DISTRICT COURT

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON RECEIPT.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATALIE JOHNSON, Plaintiff, vs. INDEPENDENT SCHOOL DISTRICT NO. 4 OF BIXBY, TULSA COUNTY, OKLAHOMA, et al., Defendants.	)	No. 88-C-340-C

JUDGMENT

This matter came before the Court for consideration of defendants' motion for summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendants, and against plaintiff.

IT IS SO ORDERED this 5th day of June, 1989.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LEWIS R. CRIST, Director of the Missouri Division of Insurance, acting as Receiver for Transit Casualty Company, Plaintiff, vs. INTEGRATED DRILLING AND EXPLORATION, INC., an Oklahoma corporation, Defendant, and QUARLES DRILLING CORPORATION, an Oklahoma corporation, Intervening Defendant.	Case No. 87-C-291-C

STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1), the parties to this action jointly stipulate to a dismissal without prejudice of Plianitff's claims and Defendants' counterclaims, and hereby dismiss such without prejudice.

GABLE & GOTWALS

By _____
Sidney G. Dunagan
Joel R. Hogue
2000 Fourth National Bank Bldg.
15 West Sixth Street
Tulsa, Oklahoma 74119
(918) 582-9201

Attorneys for Defendant, Integrated Drilling and Exploration, Inc. and Intervening Defendant, Quarles Drilling Corporation

DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

By _____
James P. McCann
Tom Q. Ferguson
1000 Atlas Life Bldg.
Tulsa, Oklahoma 74103
(918) 582-1211

Attorneys for Plaintiff, Lewis R. Crist, Director of the Missouri Division of Insurance, acting as Receiver for Transit Casualty Company

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NATALIE JOHNSON,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT NO. 4 OF BIXBY, TULSA COUNTY, OKLAHOMA, et al.,

Defendants.

No. 88-C-340-C

O R D E R

Now before the Court for its consideration is the objection of the defendants, Independent School District No. 4 and the Children's Developmental Center to the Report and Recommendation of the United States Magistrate.[1]

This is an action pursuant to 20 U.S.C. §1415(e)(2), seeking review of the final administrative decision of March 9, 1988, which held that the school district is not required to provide an

[1] *On May 26, 1989, the defendant Department of Education filed its own objection to the Report and Recommendation. Plaintiffs have not had the opportunity to respond to this objection. In view of the Court's conclusions herein, and the impending summer, the Court has not considered the Department of Education's objection.*

extended school year for the plaintiff during the summer between the 1987-88 and 1988-89 school years. The Magistrate, following a thorough recounting of the facts and procedural history, recommended that defendants be required to provide an extended school year to Natalie Johnson.

20 U.S.C. §1415(3)(2) sets forth the following standard of review:

> In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

The United States Supreme Court has elaborated as follows:

> [T]he provision that a reviewing court base its decision on the "preponderance of the evidence" is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review. The very importance which Congress has attached to compliance with certain procedures in the preparation of an IEP would be frustrated if a court were permitted simply to set state decisions at nought. The fact that §1415(e) requires that the reviewing court "receive the records of the [state] administrative proceedings" carries with it the implied requirement that due weight shall be given to these proceedings.
>
> Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982).

70 O.S. §13-101 provides in pertinent part as follows:

> Funds may be expended for school services for an additional period not to exceed forty (40) days during the summer months for approved programs for qualified children, who are severely or profoundly multiple-handicapped, provided their individualized education program (I.E.P.) states the need for a continuing educational experience to prevent loss of educational achievement or basic life skills.

It is the interpretation of this provision, which no Oklahoma appellate court has interpreted, which is determinative of the case at bar.

Most courts in interpreting state statutes have employed the regression/recoupment standard. As described by defendant school district, "these courts focus upon the amount of regression

experienced by the child during his or her summer vacation and the amount of time required in the new school year to recoup these lost skills. If the child represses to the extent that lost skills cannot be recouped within a reasonable time, then he or she is eligible for [extended school year]. (Defendant School District's Brief in Support of Objection at 5). See, e.g., Bales v. Clark, 523 F.Supp. 1366 (E.D.Va. 1981). The Magistrate concluded that 70 O.S. §13-101 provides a higher standard, calling for a continuing education experience to prevent any loss of educational achievement or basic life skills. The Magistrate further concluded that the evidence presented on behalf of the parents at the administrative hearing, e.e., testimony predicting that Natalie will suffer regression without a summer program, satisfied the preponderance of the evidence standard of 20 U.S.C. §1415(e)(2). In doing so, the Magistrate gave little weight to the testimony of Natalie's teachers that, based on past summers, Natalie did not suffer any regression which could not be recouped. Specifically the Magistrate found that "while the School District offered some testimony, it was directed only to the past, and did not properly embrace the statutory standard." (Report and Recommendation at 15) (footnote omitted).

After careful consideration, The Court cannot adopt this distinction. If a child had never previously experienced a summer without an education program, then necessarily the best possible prediction would have to be made as to the effect of such a summer. In the case at bar, by contrast, Natalie has experienced such

summers, and the empirical testimony of her teachers is that she has not significantly regressed. The Court gives greater weight to this testimony than to the largely speculative testimony presented on behalf of Natalie's parents. On the issue before the Court, the number of degrees which a witness possesses is outweighed by direct, day-to-day observation by another witness. For example, the parents presented the conclusion of social worker Fisher that "without a full calendar year of program [sic], Natalie will regress each summer to a total vegetative dependent level." This speculative conclusion is belied by direct observation of Natalie in previous summers. In sum, the Court has concluded that the defendant School District has complied with the requirements of both federal and state law.

The Court agrees with the Magistrate that the action should not be dismissed as moot. Judicial review of school placement, given the length of time necessary, confronts an issue "capable of repetition yet evading review." See Bd. of Educ. v. Rowley, 458 U.S. at 186-87 n.9 (1982).

Further, the Magistrate found that the Children's Developmental Center (where Natalie has been schooled) is not a proper party to this action, based upon 70 O.S. §13-101. (Report and Recommendation at 19 n.15). The plaintiff has not specifically objected to this conclusion. However, in view of the Court's resolution of the matter, this issue need not be addressed.

It is the Order of the Court that the motion of the plaintiffs for summary judgment is hereby DENIED.

It is the further Order of the Court that the motion of the defendants for summary judgment is hereby GRANTED.

IT IS SO ORDERED this 5th day of June, 1989.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MIDAMERICA FEDERAL SAVINGS AND LOAN ASSOCIATION

Plaintiff,

vs.

JOHN R. SHELTON and EVELYN ANN SHELTON, STEPHEN T. CASEBEER, AND THE COUNTRY OAKS HOMEOWNERS ASSOCIATION II, INC.

Defendants.

Case No. 88-C-1580-C

STIPULATION OF DISMISSAL

The Federal Savings and Loan Insurance Corporation, as Receiver for MidAmerica Federal Savings and Loan Association (the "FSLIC"), by and through its counsel of record, Barry K. Beasley, Local America Bank of Tulsa ("Local America") as Successor in Interest to MidAmerica Federal Savings and Loan Association, by and through its counsel of record, Eric P. Nelson, and John R. Shelton and Evelyn Ann Shelton (the "Sheltons"), by and through their counsel of record, Gary W. Wood, hereby file this Stipulation of Dismissal.

THEREFORE, pursuant to Fed. R. Civ. P. 41(a)1, the FSLIC, Local America, and the Sheltons hereby dismiss, without prejudice, this Cause of Action, including each and every claim asserted against each and every Party in this case.

DATED this 23rd day of May, 1989.

APPROVED AS TO FORM:

By: _____

Barry K. Beasley (OBA #11220)
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN
A Professional Corporation
1000 ONEOK Plaza
Tulsa, Oklahoma 74103
(918) 585-8141
Attorney for THE FEDERAL
SAVINGS AND LOAN INSURANCE
CORPORATION, AS RECEIVER
FOR MIDAMERICA FEDERAL SAVINGS
AND LOAN ASSOCIATION

By: _____

Gary W. Wood (OBA #9843)
3223 East 31st, Suite 101
Tulsa, Oklahoma 74105
(918) 744-6119
Attorney for JOHN R. SHELTON
AND EVELYN ANN SHELTON

By: _____

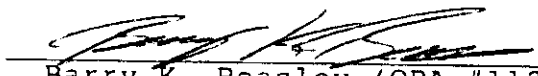
Eric P. Nelson (OBA #11941)
525 South Main, Suite 300
Tulsa, Oklahoma 74103
(918) 585-9211
Attorney for LOCAL AMERICA
BANK, SUCCESSOR IN INTEREST
TO MIDAMERICA FEDERAL SAVINGS
AND LOAN ASSOCIATION

CERTIFICATE OF MAILING

The undersigned certifies that a copy of the foregoing Stipulation of Dismissal was mailed this 23rd day of May, 1989, by First-Class mail, postage prepaid, to the parties and attorneys of record as follows:

Eric P. Nelson, Esq.
525 South Main, Suite 300
Tulsa, Oklahoma 74103

Gary W. Wood, Esq.
3223 East 31st, Suite 101
Tulsa, Oklahoma 74105



Barry K. Beasley (OBA #11220)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED ENTERTAINMENT, INC., Plaintiff, vs. MEINHARD-COMMERCIAL WESTERN, INC., a corporation, Defendant.	No. 88-C-502-C
and THE CIT GROUP/FACTORING MEINHARD-COMMERCIAL WESTERN, INC., Plaintiff, vs. BILL F. BLAIR, Defendant.	consolidated with No. 88-C-1655-C

O R D E R

Now before the Court for its consideration is the motion of the CIT Group/Meinhard Commercial-Western, Inc. (CIT) for partial summary judgment. This is an action arising out of an alleged breach of factoring agreement. In its Second Cause of Action, plaintiff seeks punitive damages for bad faith breach of contract. CIT seeks summary judgment as to that claim. CIT asserts, and plaintiff does not contest, that Oklahoma does not permit recovery of punitive damages for the breach of an obligation arising from

contract. 23 O.S. §9. The Supreme Court of Oklahoma recently declined to recognize the tortious breach of contract theory in regard to commercial loan agreements. Rodgers v. Tecumseh Bank, 756 P.2d 1223 (Okla. 1988). That court has shown no indication of adopting the theory in a case such as this.

However, plaintiff refers to the following language in the Factoring Agreement:

> Each of us hereby waives the right to trial by jury in any action or proceeding arising out of or relating to this agreement, which, together with the assignment of all Accounts hereunder, is to be construed according to the laws of the State of California.

Thus, plaintiff contends, California provides the substantive law of decision in this case. CIT relies on cases holding that, while a choice of law clause in a contract governs contractual issues, the law of another forum may apply to tort issues. See Consolidated Data Terminal v. Applied Digital Data Systems, 708 F.2d 385, 390 n.3 (9th Cir. 1983); Glaesner v. Beck/Arnley Corp., 790 F.2d 384, 386 n.1 (4th Cir. 1986); Computerized Radiological Services, Inc. v. Syntex Corp., 595 F.Supp. 1495 (E.D.N.Y. 1984), modified, 786 F.2d 72 (2nd Cir. 1986). The Court need not resolve this issue, because the Court is persuaded that California also does not recognize a cause of action for bad faith breach of contract, other than an insurance contract. In its most recent statement, the Supreme Court of California disapproved a cause of action seeking tort remedies for breach of the implied covenant of fair dealing in an employment contract. Foley v. Interactive Data Corp., 765 P.2d 373, 401 n.42 (Cal. 1988). Again, no California

decision, contrary to plaintiff's brief, recognizes a cause of action such as the one involved here.

It is the Order of the Court that the motion of the CIT Group/Meinhard Commercial-Western, Inc. for partial summary judgment is hereby GRANTED.

IT IS SO ORDERED this 7 day of June, 1989.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GARY L. BURGER, individually and derivatively on behalf of H.L.C., INC., an Oklahoma corporation and H.L.C. PRINTING AND DIE CUTTING CO., an Oklahoma corporation; H.L.C., INC., individually; and H.L.C., INC., PRINTING AND DIE CUTTING CO., individually,

Plaintiffs,

v.

SAM ALLENBERG,

Defendant.

FILED
JUN 2 1989
Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-767-B

O R D E R

This matter comes before the Court on Plaintiff's motion for relief from this Court's order of dismissal for failure to prosecute dated February 1, 1989. An evidentiary hearing on this matter was held May 31, 1989.

On October 6, 1988, Plaintiffs' counsel, Mack Braly, filed a motion to withdraw as counsel of record for Plaintiffs, following notice to Plaintiffs due to nonpayment of attorney's fees. At a status conference on October 26, 1988, at which counsel of record appeared, the Court granted Mr. Braly's motion to withdraw and gave Plaintiffs thirty (30) days to obtain new counsel of record and set the matter for a status conference February 1, 1989. Mr. Braly was to prepare the order and give notice to his clients and all interested parties. Burger is an officer of the corporate Plaintiffs. (P.4, Complaint). An order allowing Mr. Braly to withdraw and setting a February 1, 1989 status conference was filed

of record November 3, 1988.

On February 1, 1989, Plaintiffs did not appear at the status conference by counsel or *pro se.* The Court entered an order dismissing Plaintiff's case for failure to prosecute. Plaintiff's new counsel, Greg Morris, states that he first learned of the dismissal February 9, 1989. On February 10, 1989, Mr. Morris entered an appearance as attorney of record and filed a motion under Fed.R.Civ.P. 60(b)(1) which gives the Court discretion to relieve a party from final judgment due to mistake, inadvertence, surprise or excusable neglect.

Counsel Greg Morris, Mr. Burger and Mrs. Burger all testified Plaintiffs had no notice of the February 1, 1989 status conference. Morris testified he contacted Braly prior to the hearing and requested Braly to turn over Burger's files. Earlier, in January, attorney Braly refused to turn over the files to Plaintiffs' new counsel Morris, on a theory of an attorney's lien claimed. Attorney Braly testified that he advised attorney Morris of the previously set February status conference date at that time.

Attorney Braly and his associate David Wheeler, testified they believe a copy of the November 3, 1988 order setting the February status conference was delivered to Mrs. Burger while she was at attorney Braly's office in November 1988 discussing legal matters for and on behalf of the Plaintiff, Mr. Burger. Attorney Braly also testified he recalled telling Mr. Morris about the February status conference date when attorney Morris first telephoned him

inquiring about the matter on behalf of Mr. Burger in December 1988 or January 1989.

The evidence presented to the Court supports the fact the Plaintiffs either knew or through the exercise of reasonable diligence should have known of the February 1, 1989 status conference hearing. Moreover, ninety days passed since the Court allowed attorney Braly to withdraw. Plaintiffs knew of attorney Braly withdrawal and had a duty to remain informed of court settings and the prosecution of their case. No excusable neglect has been demonstrated.

Plaintiff's motion for leave from the Court's order of dismissal of February 1, 1989 is denied.

DATED this 2nd day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LUC J. VAN RAMPELBERG,

Plaintiff,

vs.

UNITED STATES OF AMERICA, UNITED STATES POSTAL SERVICE,

Defendants.

No. 88-C-379-B

O R D E R

This matter comes before the Court upon Plaintiff's Objection to the Magistrate's Report and Recommendation filed May 4, 1989, dismissing the suit because Plaintiff failed to exhaust his administrative remedies under 5 U.S.C. § 552. Plaintiff largely objects to the Report and Recommendation because Plaintiff was never provided with the procedures by which he could appeal the denial of his informal requests. Plaintiff contends the failure to provide the appeals procedure is a clear violation of 39 C.F.R. § 265.7 (d)(1)(iii). If the Freedom of Information Act was properly invoked pursuant to 5 U.S.C. §552 and 39 C.F.R. § 265.7 (a), Plaintiff should have been provided with the appropriate appellate procedures within the Postal Service. Therefore, the Court must consider which requests invoked the FOIA. 39 C.F.R. §265.7(a) provides:

> "To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record shall be in writing and bear the caption "Freedom of Information Act Request" or otherwise be clearly and prominently identified as a request for records pursuant to the

> Freedom of Information Act. A request shall be clearly and prominently identified as such on the envelope or other cover. Other requests for information will be considered informal requests and will be handled as expeditiously as practicable but not necessarily within the time limitations set forth in § 265.7(b). An informal request will be granted or denied according to the substantive rules in § 265.6, if found to be a request for a record. ..."

Plaintiff wrote three letters in an attempt to gain information. On April 6, 1988, Plaintiff sought information regarding (1) his likelihood of being hired; (2) regulations in place regarding the Postal Service's hiring practices; (3) the list of candidates who successfully completed the Postal exam, and their individual ratings; and (4) the list of candidates hired from that list. (Exhibit C, attached to Defendant's Motion for Summary Judgment). The face of the letter does not invoke the FOIA, nor can it be considered to have clearly and prominently sought information pursuant to the FOIA; therefore, the request is considered informal. In its Reply to Plaintiff's request, Defendant stated there were eight eligibles ahead of Plaintiff and that no person on the entrance register had been hired because all vacancies were filled from within the Postal Service pursuant to labor contracts. Further, Defendant stated the registers and related materials are restricted records and denied access. Defendant did not advise Plaintiff of any appellate rights or procedures.[1] (Exhibit E, attached to Defendant's Motion for

[1]Plaintiff relies upon Hudgins v. Internal Revenue Service, 620 F.Supp. 19 (D.C.D.C 1985), *affirmed,* 808 F.2d 137 (D.C. Cir. 1987), for the proposition that administrative remedies need not be

Summary Judgment).

In response to this letter, Plaintiff sought by letter dated May 4, 1988, (1) access to all rules and regulations affecting the hiring and classification of employment; (2) the legal reasons invoked for restricting access to the registers; and (3) access to the labor contract permitting promoting from within the Postal Service. This letter specifically invoked the FOIA. (Exhibit F, attached to Defendant's Motion for Summary Judgment). The Office of Human Resources answered Plaintiff's inquiry on May 5, 1988. The letter identified a Personnel Handbook that details the rules and regulations governing hiring from the register of eligibles, and the procedure for obtaining or reviewing a copy of said handbook. The response also stated the Privacy Act limits what information may be publicly disclosed. Plaintiff has been provided with all of the information which the Privacy Act allows to be disclosed. Finally, the response identified where Plaintiff could inspect the contractual provisions which give preference to hiring from within the Postal Service.[2] (Exhibit G, attached to Defendant's Motion for Summary Judgment). Each of Plaintiff's

---

exhausted when the agency fails to inform Plaintiff of his right to appeal. In that case, however, the parties had specifically invoked the FOIA and the IRS had failed to respond within the statutory time limitations. In this instance, Plaintiff did not invoke the statutory time limitations of the FOIA because Plaintiff had only made an informal request.

[2]Exhibits H and I show the Postal Service attempted to accommodate Plaintiff by offering to set up a time in which Plaintiff could view the Personnel Handbook and National Agreement with the favorable contractual provisions.

questions raised in the May 4, 1988, letter were answered; therefore, the notice of appellate rights was unnecessary.

Plaintiff's third letter, dated July 8, 1988, seeks information contained in his "personel [sic] file." There is no indication the letter is a FOIA request. (Exhibit J, attached to Defendant's Motion for Summary Judgment). Further, the request is ambiguous because "personel" can be interpreted to mean either "personnel" or "personal". To trigger the right of access to records under the FOIA an individual must reasonably describe the records requested. 5 U.S.C. § 552 (a)(3)(A).

> "If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his representative, in an attempt to provide a reasonable description of the records sought. ..."

39 C.F.R. § 265.7 (b)(3). The Department of Human Resources' response stated it had no personnel file on Plaintiff.[3] (Exhibit K, attached to Defendant's Motion for Summary Judgment). To clarify the type of "personnel" or "personal" information Plaintiff seeks, Plaintiff should submit a more detailed request for information pursuant to the FOIA.

In summary, where the FOIA has been properly invoked, Plaintiff has been provided with the information sought. Where Plaintiff has not invoked the FOIA, two questions remain

[3]It is significant to note that Defendant is not denying the request, but that it is unable to fulfill the request because it has no such information.

unanswered: (1) the list of candidates who successfully completed the Postal Examination; and (2) the list of candidates hired from the list of eligibles. The requests should be presented in an appropriate FOIA request so the Postal Service can determine whether these are agency records which may be publicly disclosed. Finally, Plaintiff's informal request for "personel" information was unduly vague and Plaintiff should submit a more detailed information request pursuant to the FOIA and § 265.7(b)(3). Therefore, the Court adopts the Magistrate's Report and Recommendation and dismisses the case without prejudice so Plaintiff may seek his information through appropriate administrative agencies.

IT IS SO ORDERED, this 2nd day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PEAT, MARWICK, MITCHELL & CO.,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 87-C-605-B
	)	
REPUBLIC FINANCIAL CORPORATION,	)	
	)	
APPELLEE.	)	

O R D E R

Appellant, Peat, Marwick, Mitchell & Co.'s Motion for Leave to File Notice of Appeal Out of Time is before the Court for decision. The order from which the Appellant seeks to appeal affirming the Bankruptcy Court was filed February 17, 1988 and was docketed by the Clerk of this Court on February 18, 1988. The time to appeal such order as provided by Fed.R.App.P. 4(a)(1) was thirty days after February 18, 1988. Subsection (a)(5) of Fed.R.App.P. 4 provides for filing a motion for extension of time to file a notice of appeal, but such motion must be filed "not later than 30 days after the expiration of the time prescribed by ... Rule 4(a)". The language in Rule 4(a)(5) "makes it clear that a motion to extend the time must be filed no later than 30 days after the expiration of the original appeal time ..." Notes of Advisory Committee on Appellate Rules, 1979 Amendment, Fed.R.App.P. 4. No notice of appeal was filed within the time provided by the Appellant nor was a motion for extension of time to file notice of appeal timely filed.

Although the docket reflects a mailing of the subject order to all counsel of record, Appellant's counsel states that none was received through the mails and notice of such order was not communicated to Appellant's counsel until sometime in March 1989 when Plaintiff was so advised orally by opposing counsel. The Motion For Leave to File Notice of Appeal Out Of Time was filed by Appellant April 19, 1989.

Appellee, Republic Financial Corporation, asserts that the Court lacks jurisdiction because the subject motion was not filed within the time permitted by Fed.R.App.P. 4(a)(1)(5). The weight of authority called to the Court's attention by the Appellee supports this view. Mayfield v. United States Parole Commission, 647 F.2d 1053, 1055 (10th Cir. 1981); Pryor v. Marshall, 711 P.2d 63 (6th Cir. 1983); Pettibone v. Cupp, 666 F.2d 333 (9th Cir. 1981); Wyzik v. Employee Benefit Plan of Crane Co., 663 F.2d 348 (1st Cir. 1981); and Brooks v. Britton, 664 F.2d 665 (11th Cir. 1982).

The record before the Court indicates Appellant's counsel personally learned, through communication with opposing counsel, of the subject order on or before March 10, 1989. The subject Motion For Leave to File Notice of Appeal Out of Time was not filed until approximately 40 days thereafter.

The Court deems it unnecessary to rule on the jurisdictional question because, under the facts and circumstances herein, no cause or excusable neglect has been shown for an extension of time to file a notice of appeal in this case. Appellant, Peat, Marwick,

Mitchell & Co.'s, Motion For Leave to File Notice of Appeal Out of Time is hereby DENIED.

DATED this 2nd day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED ENTERTAINMENT, INC., Plaintiff, vs. MEINHARD-COMMERCIAL WESTERN, INC., a corporation, Defendant.	)	No. 88-C-502-C
and THE CIT GROUP/FACTORING MEINHARD-COMMERCIAL WESTERN, INC., Plaintiff, vs. BILL F. BLAIR, Defendant.	)	consolidated with No. 88-C-1655-C

JUDGMENT

This matter came before the Court for consideration of defendant's motion for partial summary judgment. The issues having been duly considered and a decision having been rendered in accordance with the Order filed contemporaneously herewith,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered for defendant CIT Group/Meinhard Commercial-Western, Inc., and against plaintiff, as to plaintiff's Second Cause of Action.

IT IS SO ORDERED this 2 day of June, 1989.

H. DALE COOK
Chief Judge, U. S. District Court

FILED

JUN 2 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

v.

JOHN WESLEY MARTIN, et al,

Defendants.

87-C-494-C

ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed May 10, 1989, in which the Magistrate recommended that plaintiff's Motion for Summary Judgment be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that plaintiff's Motion for Summary Judgment is granted. The court determines as a matter of law that plaintiff is under no duty to defend defendant John Wesley Martin in Case No. CJ-87-1841 currently pending in Tulsa County District Court and further that the homeowner's policy issued to John Wesley Martin by plaintiff does not provide coverage for the loss asserted in Case No. CJ-87-1841, Tulsa County District Court.

Dated this 1st day of June, 1989.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

CLERK'S OFFICE

UNITED STATES COURT HOUSE

TULSA, OKLAHOMA 74103

JACK C. SILVER
CLERK

(918) 581-7796
(FTS) 736-7796

June 2, 1989

TO: Counsel/Parties of Record

RE: Case # 89-C-315-C
Roscoe Larrett Morris vs. Ramsey

This is to advise you that Chief Judge H. Dale Cook entered the following Minute Order this date in the above case:

> Plaintiff's motion to dismiss the complaint is hereby GRANTED.

Very truly yours,

JACK C. SILVER, CLERK

By: _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

EULA BERNARD,

Plaintiff,

v.

OTIS R. BOWEN, M.D., SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendant.

88-C-618-C

ORDER

The court has for consideration the Findings and Recommendations of the Magistrate filed May 2, 1989, in which the Magistrate recommended that the final decision of the Appeals Council be reversed and that plaintiff be found to be disabled and entitled to disability insurance benefits under §§216(i) and 223 of Title II of the Act, 42 U.S.C. §§416(i) and 423 from the date of October 10, 1985. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed.

It is therefore Ordered that the final decision of the Appeals Council is reversed and plaintiff is found to be disabled and entitled to disability insurance benefits under §§216(i) and 223 of Title II of the Act, 42 U.S.C. §§416(i) and 423 from the date of October 10, 1985. This matter is remanded to the Secretary for further action consistent with the court's findings.

Dated this 2 day of June, 1989.

H. DALE COOK, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUN -2 1989
CLERK
U.S. DISTRICT COURT

CARL R. DECORAH,

Plaintiff,

v.

GOODWILL INDUSTRIES OF TULSA, INC., an Oklahoma corporation,

Defendant.

No. 88-C-1073-B

O R D E R

This matter comes before the Court on Defendant Goodwill Industries of Tulsa, Inc.'s Motion for Summary Judgment against Plaintiff, Carl R. Decorah.

Plaintiff's Amended Complaint filed December 14, 1988 alleges he was hired as a tractor-trailer driver on March 1, 1982 by Defendant. Plaintiff alleges he was fired January 1986 in violation of Title VII, 42 U.S.C. §2000e *et seq.* because he is a native American Indian. Plaintiff also attempts to allege a state cause of action for wrongful termination in violation of public policy.

Defendant correctly points out that any state court action under wrongful termination sounds in tort. Burk v. K-Mart, 60 O.B.J. 305 (Feb. 7, 1989). Plaintiff's state court claim is barred by the applicable two-year statute of limitations. 12 O.S. §95. Plaintiff contends he was fired January 1986. This cause of action was not pled until December 1988.

Defendant also moves for summary judgment on Plaintiff's Title VII claim. Summary judgment pursuant to Fed.R.Civ.P. 56 is

appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, Plaintiff "must establish that there is a genuine issue of material facts..." Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Defendant shows Plaintiff was an employee-at-will. (Plaintiff's Depo. pp. 74-75). Plaintiff alleges he was fired in violation of Title VII. Defendant contends Plaintiff was fired due to several unsafe driving incidents which occurred after December 1, 1984. (Defendant's Exhibit E). Defendant states that on January 21, 1986, Plaintiff was fired for tailgating another vehicle and not because of his race. (Cynthia Paden Affidavit ¶7). In fact, Defendant shows another native American Indian replaced Plaintiff. (Cynthia Paden Affidavit ¶7).

In an attempt to establish a material issue of fact, Plaintiff's brief states he was fired due to his race. Plaintiff submits a notice of determination by the Oklahoma Employment Security Commission which states the Commission found the evidence before it failed to establish a "willful and deliberate misconduct" by Plaintiff. Plaintiff also submits a letter from the president of Goodwill dated March 13, 1984 stating that a counseling card of February 29, 1984 is not to be used as evidence against Plaintiff. Defendant's evidence submitted, however, concerns a time frame beginning December 1984. Plaintiff submits Goodwill's safety procedure outline. Plaintiff also submits a reprimand dated July 15, 1985 that if he has a "repeat safety infraction" of "pulling away from the dock without locking the roll-up back door" he will be suspended for a week.

Plaintiff has failed, however, to submit affidavits, depositions or answers to interrogatories affirmatively showing he was fired due to his race as required under Fed.R.Civ.P. 56(e). Therefore, summary judgment must be GRANTED in favor of Defendant. Plaintiff cannot simply "rest upon the mere allegations" of his pleadings.

DATED this 2nd day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CARL R. DECORAH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 88-C-1073-B
	)	
GOODWILL INDUSTRIES OF TULSA, INC., an Oklahoma corporation,	)	
	)	
Defendant.	)	

J U D G M E N T

In accordance with the Order filed this date, Judgment is hereby entered in favor of Defendant Goodwill Industries of Tulsa, Inc., and against Plaintiff, Carl Decorah. Each party is to bear their own respective attorney's fees, and costs are assessed against the Plaintiff.

DATED this 2nd day of June, 1989.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION, a corporation, Plaintiff,	)	
vs.	)	Case No. 88-C-452-C
EDWARD M. BEHNKEN, RALPH L. ABERCROMBIE, DONNIE W. PITMAN, J. R. THOMAS, JACK H. SANTEE, MIKE RABINOWITZ, GLENN E. BRUMBAUGH, and LARRY D. SWEET, Defendants.	)	

NOTICE PURSUANT TO RULE 41(a)(1) OF DISMISSAL
WITHOUT PREJUDICE AS TO DEFENDANT LARRY D. SWEET

COMES NOW the Plaintiff Federal Deposit Insurance Corporation ("FDIC") pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure and dismisses this action without prejudice as to Defendant Larry D. Sweet. Said Dismissal Without Prejudice is effective only as to said Defendant Larry D. Sweet and not in respect to any other Defendants in this action. At the time of filing this Notice Of Dismissal Without Prejudice, Defendant Larry D. Sweet has not filed or served upon Plaintiff FDIC an Answer herein or a Motion for Summary Judgment.

Dated this first day of June, 1989.

Respectfully submitted,

Lance Stockwell, OBA No. 8650
Bradley K. Beasley, OBA No. 628
Of BOESCHE, McDERMOTT & ESKRIDGE
800 Oneok Plaza
100 West 5th Street
Tulsa, Oklahoma 74103
(918) 583-1777

and

Peter C. Houtsma
Patrick M. Westfeldt
Jack M. Englert, Jr.
HOLLAND & HART
555 17th Street, Suite 2900
Denver, Colorado 80201
(303) 295-8000

ATTORNEYS FOR PLAINTIFF,
FEDERAL DEPOSIT INSURANCE
CORPORATION

Address of Plaintiff:

550 17th Street, N.W.
Washington, D.C. 20429

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 1989, I mailed a true and correct copy of the foregoing Notice Pursuant to Rule 41(a)(1) of Dismissal Without Prejudice as to Defendant Larry D. Sweet by placing a copy thereof in the United States mail, postage prepaid, addressed to the following:

Andrew S. Hartman, Esq.
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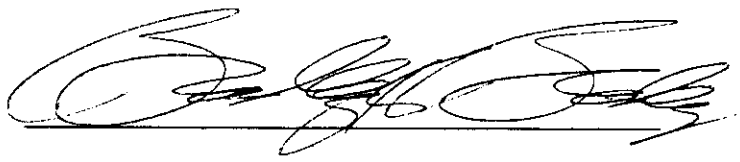

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MOHAWK RUBBER COMPANY,

Plaintiff/Appellant,

v.

OTASCO, INC., et al,

Defendants/Appellees.

88-C-1611-B

ORDER

Now before the court is the appeal of Mohawk Rubber Company ("Mohawk") of the Order of the United States Bankruptcy Court for the Northern District of Oklahoma dated 12/9/88, which granted in part and denied in part the Motion for Relief from Automatic Stay filed by Mohawk ("the Order"). The Order held that a perfected security interest held by Mohawk did not secure repayment of a $1,117,068 open account obligation owed Mohawk by Otasco, Inc., the debtor in bankruptcy, and allowed Mohawk to repossess only the security which it had in a Short Term Note ("Short Term Note") in the amount of approximately $700,000.

The facts are briefly as follows. Prior to the filing of its bankruptcy petition on 11/6/88, Otasco purchased Mohawk brand automotive tires for subsequent retail sale. The terms and conditions of sales by Mohawk to Otasco were as follows:

(a) Payment Terms:

(i) $1,300,000 of tires were sold on a short term note dated May 8, 1987;

(ii) the balance of all sales were due on the tenth day of the second month following the date of sale.

(b) Interest: 1% per month on past due amounts.

(c) Collateral: All Mohawk brand automotive tires in the Otasco retail stores.

On 12/20/87, $600,000 of the principal plus interest was paid on the Short Term Note. Principal plus interest in the amount of $705,104 was in default when Otasco filed its bankruptcy petition on 11/6/88.

On 5/1/87, Otasco and Ameritrust executed and delivered to Mohawk a "Security and Subordination Agreement" (the "Agreement"). The Agreement stated in pertinent parts:

> Mohawk sells to OTASCO certain MOHAWK brand automotive tires for subsequent retail sale by OTASCO; OTASCO's initial inventory of such merchandise is shown on Exhibit A attached hereto and made part hereof. All such merchandise located in OTASCO retail stores, including all such as is used by OTASCO in the ordinary course of its business as display merchandise, previously or hereafter acquired by OTASCO from Mohawk which is now or from time to time hereafter located in any of OTASCO's retail premises is hereinafter referred to as 'Display Merchandise'. Notwithstanding anything herein to the contrary, all merchandise from time to time acquired by OTASCO from Mohawk which is located at any of OTASCO's warehouse locations, including, without limitation those warehouse locations listed on Exhibit B attached hereto and made part hereof, shall not constitute Display Merchandise.
>
> * * *
>
> AmeriTrust and OTASCO are parties to a certain Loan and Security Agreement dated as of December 12, 1986, pursuant to which AMERITRUST has provided and may hereafter provide to OTASCO, loans and other financial accommodations and OTASCO has granted to AmeriTrust a senior, perfected, continuing security interest in all of OTASCO's presently owned and hereafter acquired inventory, including without limitation such inventory constituting Display Merchandise hereunder.
>
> * * *

1. OTASCO hereby grants to Mohawk a security interest in and to all presently existing Display Merchandise.

2. OTASCO hereby grants to Mohawk a security interest in any Display Merchandise hereafter acquired by OTASCO from Mohawk, such security interest arising at such time as such merchandise becomes, and only to the extent that it constitutes, Display Merchandise. OTASCO and Mohawk hereby agree that the security interests granted in paragraphs 1 and 2 hereof shall not include any proceeds of the Display Merchandise.

3. OTASCO anticipates that it will, from time to time, replace Display Merchandise then on hand with other Display Merchandise. In this regard, OTASCO agrees to replace existing Display Merchandise with Display Merchandise of a like grade and quantity and all of the same shall be MOHAWK brand.

4. AMERITRUST expressly acknowledges the security interest granted to Mohawk by OTASCO in the Display Merchandise and hereby agrees to subordinate its (AMERITRUST's) security interest in such Display Merchandise to that of Mohawk created hereunder; provided, however, that in no event shall Mohawk's senior security interest in Display Merchandise secure obligations of OTASCO to Mohawk in excess of $1,300,000, which amount may be amended from time to time, in accordance with paragraph 7, hereof. To the extent OTASCO's obligations to Mohawk shall at any time exceed such amount, the excess shall be secured by a security interest in favor of Mohawk junior to that of AMERITRUST and the subordination provided herein shall not be applicable to such extent. It is the intention of the parties that the security interest of Mohawk in the Display Merchandise will be superior to that of AMERITRUST, subject only to the exception stated in the two immediately preceding sentences.

* * *

7. This Agreement represents the entire agreement among the parties and shall not be revoked or

modified, except by the express written agreements of all the parties hereto.

8. The terms of the Agreement shall be interpreted and enforced according to the laws of the State of Illinois.

Mohawk perfected its security interest in all states in which Otasco did business. The total of all pre-petition debts owed by Otasco to Mohawk was approximately $1,750,000 consisting of (1) an open account obligation of approximately $1,005,000 and (2) an obligation on the Short Term Note of approximately $705,000.

On 5/8/87, Otasco executed and delivered to Mohawk a Promissory Note ("Note") in the principal amount of $1,300,000, the Short Term Note mentioned above. Mohawk contends that the security interest which Ameritrust has in all Mohawk brand tires in Otasco's retail stores is subordinated to Mohawk's security interest to the extent provided in the Agreement.

All the parties concede that the Short Term Note (covering $705,104 owed Mohawk by Otasco) was secured by Mohawk's security interest in the tires, but Ameritrust alleges that the open account obligation of $1,117,068 for tires sold by Mohawk to Otasco is not secured by the tires under the Agreement. Mohawk claims that the tires secured the Note and any future advances made by Mohawk to Otasco after May 1987, up to a total of $1,300,000.

The Bankruptcy Court found in Ameritrust's favor and limited Mohawk's security interest in the tires to $705,104 worth of tires. The Bankruptcy Court found that the Note and Agreement

were part of one transaction, and thus the Agreement only secured the debt created by the Note. It also found that the Agreement did not contain a future advance clause because a future advance clause under Illinois law must be clearly and unambiguously expressed, so the collateral could only secure the debt evidence by the Note.

Mohawk appealed, and claims that the Bankruptcy Court erred when it found that the Agreement did not clearly contain a future advance clause and that governing Illinois law required such clauses to be clearly expressed without reference to parol evidence. Mohawk also alleges that the Bankruptcy Court denied Mohawk the opportunity to introduce parol evidence to interpret the Agreement, while allowing Ameritrust to do so, and erred by interpreting the ambiguous agreement in Ameritrust's favor.

The district court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a).[1] Orders approving or failing to approve the sale of a debtor's property are considered final decisions and are immediately appealable. In re Sax, 796 F.2d 994 (7th Cir. 1986); Matter of Kaiser, 791 F.2d 73 (7th Cir. 1986).

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[1] 28 U.S.C. § 158(a) reads as follows:

> The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title [28 USCS § 157]. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate review of bankruptcy rulings with respect to findings of fact. In re: Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). However, this "clearly erroneous" standard does not apply to review of mixed questions of law and fact, which are subject to the de novo standard of review. In re: Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988); In re: Mullett, 817 F.2d 677, 679 (10th Cir. 1987). This appeal challenges the legal conclusion drawn from the facts presented at trial, so de novo review is proper.

Under Illinois law if a contract is regarded as ambiguous or uncertain, the construction of the contract as shown by the acts of the parties is persuasive as to the true construction. Moran v. Commonwealth Edison Co., 393 N.E.2d 1269 (Ill.App.3d 1979). Where a court finds that a written instrument is ambiguous or uncertain, extrinsic or parol evidence is admissible to establish missing elements. In re Hunter, 68 B.R. 366, 369 (C.D.Ill. 1986). This rule has been applied by the Illinois Court to future advances clauses. Id.

In Stannish v. Community Bank of Homewood-Flossmor, 24 B.R. 761, 763 (N.D.Ill. 1982), the court found that a security agreement may cover future advances as well as past debt, but the future advances clause must be clear and unambiguous so as to put a subsequent creditor on notice. Id. The Illinois Courts have emphasized that future advance clauses are not favored under

Illinois law, but will be upheld "where no ambiguity exists and will be interpreted according to the language used." Id.

The Court in Hunter, supra at 369, supported the Stannish decision, but said that it was inapplicable to a situation where the language of a document was ambiguous:

> Where, as in this case, the terms of an agreement are not clear or are ambiguous, the agreement should be construed to give effect to the intention of the parties, which intention should be ascertained by an examination of all the facts and circumstances manifested by the evidence, including the relationship of the parties, subject matter of the agreement, and the purpose or object for which it was created.... Furthermore, an agreement should be construed most strongly against the party who prepared it, for the reason that he chose the words to be used and is therefore more responsible for the existence of the ambiguities. The rule of law is applied in this manner because the drafter should be held accountable for the ambiguities of its own expression.

The court has reviewed the transcript of the hearing on the Motion for Relief from Stay and finds no credence to Mohawk's claim that it did not receive an opportunity to present extrinsic evidence and thus the hearing was unfair. Mohawk had full opportunity to present its evidence -- in fact, Mohawk presented the first witness, Mr. Bill Brust (TR 3-4), was offered a chance to present additional witnesses and offered no others (TR 33), and made no offer of proof as to the evidence allegedly excluded by the court. Mohawk's attorney clearly stated that Mohawk had no claim to tires in Otasco's warehouse and that the Agreement was clear and unambiguous (TR 50). However, Mohawk now alleges that if no clear "future advances clause" existed in the Agreement, the wording appeared to contemplate future advances.

Mohawk argues the fact of ambiguity does not mean a clause was not intended by the parties.

The Court has reviewed the Agreement and finds no future advances clause in it. Any ambiguity in this regard stems from the fact there is no specific mention of future advances or language to that effect by the parties. The Court finds that the Bankruptcy Judge was correct in finding that under Illinois law such a clause has to be clear and unambiguous to be created, and thus no such clause can be implied.

Therefore, the Court finds that the Order of the Bankruptcy Court of December 9, 1988 should be and is hereby affirmed.

DATED this 1st day of June, 1989.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

FILED

JUN - 1 1989

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARVIN HARRELL,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	No. 89-C-0025-E ✓
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, a foreign corporation,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL OF MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY WITHOUT PREJUDICE

COME NOW the Plaintiff Marvin Harrell and Defendant Massachusetts Mutual Life Insurance Company, a foreign corporation, and stipulate to the dismissal without prejudice of any and all claims asserted herein against Defendant Massachusetts Mutual Life Insurance Company, a foreign corporation, only.

FRASIER & FRASIER

BY: _____

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GABLE & GOTWALS

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